

An evaluation of section 6 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012



CRIME AND JUSTICE

**An evaluation of section 6 of the Offensive
Behaviour at Football and Threatening
Communications (Scotland) Act 2012**

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Executive Summary

Background

- This is an evaluation of section 6 of the Offensive Behaviour and Threatening Communications (Scotland) Act 2012. It seeks to determine whether the introduction of section 6 has achieved its primary aim of preventing the communication of threatening material, particularly where it incites religious hatred, that would otherwise have occurred, and that it has done so without causing any other unintended harmful consequences.
- This evaluation is based on qualitative research methods (e.g. semi-structured interviews with relevant stakeholders), analysis of Crown Office and Procurator Fiscal Service (COPFS) data, and findings from an online survey of Scottish football fans, conducted by ScotCen Social Research.

The use of section 6

- Since the Act was introduced in March 2012, there have been 33 “threatening communications” charges under section 6 of the Act. There were 5 in 2011-12 (during March 2012 – the first month of the legislation), 19 in 2012-13, and 9 in 13-14¹.
- The relatively low number of charges makes it difficult to provide generalised research findings about patterns of reported offending. This report however provides some information about the accused, the victims, the nature of charges and the court outcomes. This is based on research already published by the Scottish Government in annual reports of the charges reported under the Act².
- Of the accused in these charges, 25 were male (76%), and 23 were aged between 16 and 30 (69%).
- Fifteen of the section 6 charges were recorded as being related to football in some capacity (45%). Four section 6 charges included

¹ The number of charges reported in 2014-15 will be published by COPFS in June 2015

² Goulding and Cavanagh (2013) *Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act (2012) in 2012-13*. The Scottish Government, available at <http://www.scotland.gov.uk/Resource/0042/00425855.pdf> and Skivington and McKenna (2014) *Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 in 2013-14*. The Scottish Government, available at <http://www.scotland.gov.uk/Resource/0045/00452585.pdf>.

reference to religion, 2 included a racial element, and 4 referenced support of a terrorist group.

- Of the total section 6 charges, 27 had a specific victim of the offence; 14 of these victims were workers (e.g. bar staff or security steward) and 13 were members of the public.
- Scottish Government ‘criminal proceedings’ data for the 3 financial years that are available (2011-14)³ show that prosecutions have been completed in 9 of the 33 charges. Of these, 8 have resulted in convictions and 1 was found not guilty. Three of the accused were given monetary penalties, 2 were given community payback orders, 2 were admonished, and 1 received a custodial sentence.
- Police respondents who had experience of using section 6 had done so with incidents of threatening communications that they perceived were relatively straightforward – section 6 was deemed as an appropriate charge in these circumstances
- COPFS respondents were satisfied that section 6 has gone some way to addressing threatening communications made over social media, an area in the existing legislation that was previously identified as potentially being insufficient.

Impact of section 6

- Justice system practitioners perceived a drop over the past two years in offences that may have been relevant to section 6. This was believed to be due in part to a series of high-profile prosecutions of threatening communications (by section 6 or not) that had ‘sent a message’ to the public about the unacceptability of such actions, and raised awareness of the existence of legislation to deal with such incidents. A lack of Rangers and Celtic fixtures, cooling the rivalry between these opposing sets of supporters, was also thought to have made an impact.
- To consider the potential impact of the legislation on a key group who might be affected by it, the evaluation included a survey of football supporters in Scotland. This asked respondents about threatening, offensive and potentially inciteful material that they might have seen in different places including social media. This research therefore only provides an indication into a specific group of people who might be affected and not a representative sample to everyone who is affected by the legislation.

³ See: <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubCriminalProceedings> . Charges completed after the 2013-14 financial year are not included in this evaluation. Also, note that charge information from COPFS is based on charges reported by the police to COPFS in a financial year, and criminal proceedings information is from the Scottish Court Service and based on charges completed in court during a financial year.

- Of a sample of 2,185 active football supporters in Scotland, around half (51%) said that while visiting football related internet sites, online forums or blogs to post messages and / or read about football over the past two seasons (the seasons coinciding with the introduction of the Act) they have been offended at some point by something they saw or read.
- Of those respondents who were offended by something on a football-related internet site, 45% were offended by negative references to religion, 35% by comments in support of terrorism, 33% by the celebration or glorification of the loss of life, 26% by negative references to a person's country of origin, 26% by threats of violence, 19% by negative references to a person's sexuality, 15% by negative references to a person's skin colour, and 11% by negative references to a person's gender.
- Forty-one percent of people said that they had perceived no change in the frequency of offensive comments during this time. A quarter of respondents (25%) said these comments had become more frequent and a similar proportion (24%) said they had become less frequent.
- The survey asked respondents to what extent they believed the 'threatening communications' legislation had achieved its aims of reducing threats of violence and incitements of religious hatred.
- Fifty-six percent believed the Act had made no difference in relation to frequency of incidents of *threats of violence* in football fan forums and elsewhere; 18% believed it had contributed to a reduction; and 5% believed it had caused an increase.
- Most respondents (58%) also said that they believed the Act has made no difference in relation to such incidents of *incitement of religious hatred* in football fan forums and elsewhere; 19% believed it had contributed to a reduction; and 7% believed it had caused an increase.
- Ten percent of respondents claimed they had changed their behaviour in regards to what they might post online since the Act was introduced. Thirty-four percent of these respondents claimed this change in behaviour was as a direct result of the Act.

Potential barriers to the use of section 6

- A potential barrier to the use of the legislation was the varying levels of awareness of section 6 amongst justice system practitioners. Knowledge gaps may exist due to: lack of suitable training of justice system practitioners; misinterpretation of certain aspects of section 6 (believing it to be football related only); and lack of direct or indirect experience.

- Respondents commented that the high legal threshold of section 6 meant that existing legislation (i.e. section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and section 127 of the Communications Act 2003) would remain appropriate for the majority of cases involving threatening communications. Section 6 represented an additional as opposed to a replacement charge, specifically one that would mostly likely only be used in more serious cases.
- Obtaining sufficient evidence that would be more likely to lead to a successful prosecution was noted to be a significant challenge for prosecutors in some section 6 cases. This was particularly the case where a threatening communication was made via an electronic device onto a social media host site and there was no admission of guilt from the accused.

1. Introduction

1. The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (hereafter referred to as 'the Act') was passed by the Scottish Parliament on 14 December 2011, received Royal Assent on 19 January 2012 and came into effect on 1st of March 2012. One of the main objectives of the new Act, through provisions made in section 6, is 'preventing the communication of threatening material, particularly where it incites religious hatred'⁴. To achieve this objective section 6 of the Act criminalises the communication of material that contains or implies a threat, or an incitement, of a serious violence and threats which incite religious hatred. The Act also seeks, through provisions made in section 1, to prevent offensive and threatening behaviour related to football matches – this is the focus of a separate evaluation.
2. This report presents findings of an evaluation of section 6 of the Act. The evaluation was conducted by Neil Davidson of the Justice Analytical Services division of the Scottish Government.
3. This evaluation is predominately based on qualitative research methods (e.g. face-to-face interviews) but also includes analysis of Crown Office and Procurator Fiscal Service (COPFS) data and findings from an online survey, conducted by ScotGen Social Research. This survey sought the opinions of supporters of Scottish football clubs focussing on their experiences during the two football seasons between 2012 and 2014.

Background

4. During the football season of 2010-11 a series of threatening communications were made that were seen as linked to the wider set of issues of disorder in and around football games, particularly in relation to the two main Glasgow based teams Celtic and Rangers.
5. After one game⁵ between these two teams a “summit” was called to address issues that had become particularly high profile in the previous few months. Around this time the former Celtic manager, Neil Lennon,

⁴ Scottish Government, 2011 Offensive Behaviour at Football and Threatening Communications Act; Policy Memorandum, p1.

⁵ During a Rangers and Celtic Scottish Cup replay played at Celtic Park in March of 2011 three Rangers players sent off, a number of on-pitch confrontations between players and coaching staff occurred. Numbers were released by Strathclyde police showing that 34 supporters were arrested inside the stadium (including 20 for alleged sectarian-motivated breaches of the peace) and claiming a total 187 'related arrests' were also made.

was the target of death threats and was sent live ammunition in the post, and was the subject of several malicious social media sites. The police also intercepted parcel bombs sent to Lennon, Paul McBride QC and MSP Trish Godman (both high profile Celtic-supporting Catholics), and to Cairde na hÉireann, an Irish Republican group based in Glasgow.

6. In June 2011, the Scottish Government published proposals for legislation designed to deal with threatening communications. The intention was to fast-track the Bill through Parliament as an Emergency Bill to allow the legislation to be in place for the start of the 2011-12 football season – this process was delayed in order to allow for a longer consultation period and a debate in parliament to address concerns raised by the Bill’s opponents. The Act and legislation was introduced in March 2012, towards the end of the 2011-12 football season.
7. The Act created two new criminal offences. Section 1 of the Act criminalised a range of offensive and threatening behaviour including religious, racist, homophobic and other offensive behaviour, at or in connection with football matches. Section 6 of the Act criminalised threatening, or inciting, serious violence and threats which incite religious hatred. Unlike the rest of the Act, section 6 is not confined to offences connected to football.
8. In creating the new legislation the policy memorandum⁶ stated that the Scottish Government’s objective was the prevention of the communication of threatening material, particularly where it incites religious hatred. The memorandum also stated that by creating a specific offence, and an imposition of a 5 year prison sentence on the most serious offenders, the Act would ‘bring clarity to the law in this area, send a clear message that such behaviour is unacceptable’ (Scottish Government, 2011 *ibid*, p8).
9. The two classes of threat that section 6 was introduced to deal with are a) threats of serious violence, and b) threats intended to stir up religious hatred, whether or not they involve threats of serious violence. Both threats are weighted equally.
10. A threat of serious violence is defined as where a person communicates material to another person, and the material consists of, contains or implies a threat, or an incitement, to carry out a seriously violent act against a person or against persons of a particular description. The offence is committed where that communication would cause a reasonable person to suffer fear or alarm, and the accused either

⁶[http://www.scottish.parliament.uk/S4_Bills/Offensive%20Behaviour%20at%20Football%20and%20Threatening%20Communications%20\(Scotland\)%20Bill/b1s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Offensive%20Behaviour%20at%20Football%20and%20Threatening%20Communications%20(Scotland)%20Bill/b1s4-introd-pm.pdf)

intended to cause such fear or alarm, or was reckless as to whether the communication of the material would cause such fear and alarm. The communicated material applies to text, images, video and recorded sound (unrecorded speech is not included), communicated by any means (such as by post, on leaflets or posters or posted on the internet).

11. Threats 'intended to stir up religious hatred' are defined as hatred against a person or group of persons based on their membership of a religious group⁷, or of a social or cultural group with a perceived religious affiliation. It brings Scotland into line with England and Wales, where threats intended to stir up religious hatred have been criminalised since 2006⁸.
12. A person guilty of an offence under section 6 is liable on conviction to a fine, imprisonment for a term not exceeding 5 years, or to both. Summary conviction can lead to a fine, or imprisonment for a term not exceeding 12 months, or to both.
13. Additional prosecutorial resources, specifically three regionally-based Football Liaison Prosecutors within the COPFS were introduced to coordinate and oversee all football-related prosecutions. The Football Coordination Unit for Scotland (FoCUS) were also tasked with helping implementing the new law by providing national level specialist training and resources, and to compliment and assist local level policing.

Passage of the Act

14. Submissions were sought on the Act during the consultation period. Key concerns raised by these submissions were addressed by the Justice Committee⁹ and during Parliamentary debates. The majority of the concerns were in relation to Section 1 and are therefore not relevant to this evaluation of section 6 of the Act. Furthermore, most commentators were in agreement that threatening communications were a cause for concern and therefore supported the principles of the legislation in general – the issues instead were regarding various details of section 6. The main issues raised are discussed below.

⁷ The definition of "religious group" is the same as that used in section 74 of the Criminal Justice (Scotland) Act 2003, which provides for a statutory aggravation that an offence was aggravated by religious prejudice.

⁸ Public Order Act 1986, as amended by Racial and Religious Hatred Act 2006 (and both Northern Ireland and the Irish Republic have also legislated to criminalise inciting religious hatred).

⁹ Justice Committee 1st Report, 2011 (Session 4) Report on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill at Stage 2. Available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Reports/OFBTC_Bill_FINAL.pdf

The need for new legislation

15. Many people/groups expressed the opinion that they were not convinced gaps existed in previous laws – this new law would merely be duplication and serve little purpose. Defending the necessity of the powers, the COPFS¹⁰ cited the limitations in the existing legislation, particularly the wide range of ways in which such threatening behaviour can be expressed (e.g. social media). It was highlighted that, for example, existing legislation does not always cover situations where the threatening communication offences occurred in private contexts (common law offence of breach of the peace), where the intentions of the accused to carry out the threat made were uncertain (common law offences of uttering threats and incitement), where the threats were inciteful of religious hatred (section 38 of the Criminal Justice and Licensing (Scotland) Act 2010) and where these threats were indirect e.g. on social media networks, rather than as direct messages (section 127 of the Communications Act 2003).

Freedom of Speech

16. Concerns were raised that section 6 had the potential to infringe upon freedom of speech. Religious groups such as the Christian Institute were particularly concerned about the possible ramifications section 6 had for expression of religious beliefs. In response to these concerns the Bill was amended at Stage 2 to include the provision that Condition B – stirring up hatred on religious grounds – does not prohibit or restrict certain behaviours that would be protected under existing rights to freedom of expression. It was also highlighted by both the Lord Advocate's Guidelines¹¹ and the Act's accompanying 'explanatory notes'¹² that the communicated material must be intended to cause fear or alarm (or is communicated with recklessness as to whether fear and alarm is caused) for an offence to be committed. This would therefore ensuring that depictions of death or injury in art, literature, the theatre, film, video games, or similar cultural or dramatic contexts, and threats made in jest that no reasonable person would find alarming are not caught by the offence.

¹⁰ Justice Committee report on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill at Stage 2; Response from the Crown Office and Procurator Fiscal Service. Available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20111101_LA_response_to_report.pdf.

¹¹ Lord Advocate's Guidelines on the offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. Available at http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20111101_LA_draft_guidance.pdf.

¹² Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 Explanatory Notes. Available at <http://www.legislation.gov.uk/asp/2012/1/notes/data.pdf>.

Sentencing

17. The Committee was concerned about the introduction of the legislation being a catalyst for drawing children and young people into the ambit of the criminal justice system or the Children's Hearing system. ChildLine in Scotland also expressed concern that this sort of legislation was not necessarily the best way of dealing with issues like cyber-bullying and felt that only exceptional cases should be referred to the Children's Hearings System.
18. Individuals/groups felt that it should be noted that there are different context for different behaviours, and that the context of the communication needs to be considered before charges are made. The Committee were also concerned that people may have a different concept of appropriate conduct in semi-public web forums compared to in other communicative mediums. It was acknowledged that identity may be managed in different ways in the 'real world' and online, therefore it was felt that it may not always be appropriate to treat communications in these spheres of life in the same way.

Enforcement

19. Several issues were raised in relation to the potential technological challenges involved in policing threatening communications, specifically the practical concerns about tracking online communications, finding the sufficiency of robust evidence to make a conviction, and the need for the jury to be properly informed of the risk of evidence being unreliable. Police representatives also sought assurances that appropriate resources and funding would be provided to deal with any increased workload in order to prevent having to divert front-line resources from elsewhere.
20. In setting out the case for the Bill, the Government did not seek to quantify the current costs of dealing with such offences nor of the wider costs of dealing with online crime more generally. However it did re-emphasised that much of the behaviour that section 6 covers is already criminal and liable to prosecution anyway, meaning that the additional cost of the Act's provisions were estimated to be relatively limited.

Extraterritoriality

21. There were concerns expressed about the extraterritorial scope of the Bill. Section 6 provides that an offence may be committed by a person outside of Scotland who is a British national but also includes 'any person from outside Scotland if the person intends the material communicated to be read, looked at, watched or listened to primarily in Scotland.' Although examples of collaboration between international policing institutions to deal with offences committed online do exist (e.g. cases involving paedophilia) there is potential for such cases to be

labour intensive due to foreign communications and the multitude of foreign data protection and investigatory laws of the foreign jurisdictions

22. Given the absence of clear national barriers online, the Committee commented that it expected the use of section 6 in such circumstance to be restricted to exceptional cases where it is considered in the national interest to pursue a conviction and there was reasonable prospect of it being successful. Similarly the Lord Advocate's advice states that 'given the practical and logistical difficulties of investigating and prosecuting a crime that occurred outside Scotland, a careful and measured approach must be taken and the authorities in the place where the offence occurred should ordinarily have primary jurisdiction.'¹³

¹³ Lord Advocate's Guidelines on the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, p9. Available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20111101_LA_draft_guidance.pdf

2. The evaluation

24. A report on the operation of the new offences was a statutory requirement of the legislation, and this evaluation was commissioned to support this requirement. This evaluation seeks mainly to determine whether the introduction of section 6 has achieved its primary aim; the prevented the communication of threatening material, particularly where it incites religious hatred that would otherwise have occurred, and achieving this without causing any other unintended harmful consequences.
25. To assess whether section 6 has achieved this purpose the evaluation uses both qualitative and quantitative research methods to explore the introduction, enforcement and impact of the legislation, gauging the perspectives of a full a range of key stakeholders (e.g. the police, the judiciary, Scottish football supporters, and internet forum administrators). The evaluation also addresses some of the issues raised during the consultation period and considers the extent to which these concerns have been realised or not.
26. The time period for the evaluation is from March 2012 to April 2014; this includes 1 month (March 2012) of the 2011-12 financial year¹⁴, and the following 2 full financial years, 2012-13 and 2013-14.

Research methods

Qualitative interviews

27. The report draws on data from qualitative interviews. The following participants were involved: 7 front-line police officers; 4 members of the Football Coordination Unit Scotland and 2 Football Liaison Procurator Fiscals. Interviews with police officers and the representatives from COPFS were all conducted face-to-face. The interviews were semi-structured, following a topic guide (see Appendix A for interview schedule example), and lasted approximately 40 minutes each.
28. Two online interviews were completed with forum administrators of Scottish football supporter websites, and a phone interview with 1 national newspaper website forum administrator. These methods were used in order to facilitate participation in the evaluation.

¹⁴ Data from March 2012 is included in this evaluation as the Act came into Force on 1 March 2012, which was the final month of the 2011-12 financial year.

29. All interviews were carried out by Neil Davidson, a social researcher in Justice Analytical Services, and Kathryn Skivington¹⁵.

Official administrative data

30. This report focuses on charges reported under section 6 of the Act during the period of March 2012 through to March 2014, and provides further analysis of Scottish Government published statistics on the number of section 6 charges reported to the COPFS for 2011-12 (single month) 2012-13 and 2013-14.

Online Survey

31. A nation-wide online survey was conducted to attempt to assess the impact of the Act on the views and behaviour of Scottish football supporters – a key target group for the legislation following the origins of the legislation in football-related threats on social media. The survey was conducted by ScotCen Social Research (who were part of the team involved in undertaking the accompanying evaluation of section 1 of the Act) over seasons 2012-13, 2013-14, and was designed to provide an overview of opinions from a cross-section of fans – specifically, supporters at clubs in the Scottish Premier League (SPL) and Scottish Football Leagues 1, 2 and 3. Several questions regarding section 6 were included in the most recent survey (season 2013-14) and drew on a sample size of 2,185 supporters. These respondents were reached with the assistance of Supporters Direct Scotland (SDS). SDS has created a forum for Scottish football supporters who wish to debate issues related to Scottish football via its ‘Scottish Fans’ forums and social media streams. SDS supporters network has members from all the 42 SPFL clubs that includes both season ticket holders and non-season ticket holders. Every supporter in the SDS network received an emailed invitation to take part in the survey by clicking on a hyperlink and responses were subsequently received from supporters of all 42 clubs.

Limitations of the methods

32. There are a number methodological issues to take into account in relation to the data gathering process. First, it was sometimes difficult to recruit all of the intended participants (a common challenge of qualitative research). Generally the representation of practitioners and relevant stakeholders was high, however there were some access issues encountered in relation to recruiting Sheriffs and Fiscals primarily because they did not believe they could offer any relevant information as the vast majority had no dealings with section 6 charges. The excerpts from Sheriffs that are included in this evaluation are from data

¹⁵ Previously of Justice Analytical Services.

provided by the team that has undertaken the accompanying evaluation of section 1 of the Act. However, while there were some recruitment difficulties a wide range of stakeholders were interviewed and engaged fully with the research, enabling a good understanding of the key issues in relation to policing and enforcement of the act.

33. The methodological issues associated with the Scottish football supporters survey is covered in greater detail in the accompanying evaluation of section 1 of the Act. However, it should be noted that the survey was designed predominately to answer questions regarding section 1 of the Act (offensive behaviour at football), meaning several questions regarding section 6 (threatening communications) may have been coloured by the respondents opinions on the former (e.g. questions enquiring into a respondent's knowledge of the Act, and how it has impacted behaviour at football). Involving only football supporters may also only provide specific perspectives, missing alternative views that might be gained from involving other groups within society (e.g. experiences of online racist, sexist, homophobic threats). However, the views of football supporters may be a useful reference point for thinking about the effectiveness of the legislation, given the recent history of many of the high profile threatening communications related to football.

3. Use of section 6

34. This chapter outlines the number, nature and outcomes of the section 6 charges, as reported to the COPFS and published by the Scottish Government, between March 2012 and March of 2014.
35. During this time period there were 33 charges¹⁶; 5 charges in 2011-12 (1 month), 19 in 2012-13, and 9 in 2013-14. This is a comparatively low number compared to charges under section 1 of the Act for the same period (538¹⁷).
36. The section of the evaluation provides some basic information on the specifics of the section 6 charges (offender demographics, the nature of the offence, and the disposals). However due to the low number of section 6 charges, more detailed analysis and extrapolations of trends and how the Act has been used – which would ideally be included in this section of the evaluation – is not possible because of risk of disclosure of personal details.
37. The chapter also considers the opinions of justice system practitioners on the section 6 cases they were involved with.

Trend in charges reported in 2011-12, 2012-13 and 2013-14

Age and sex of the accused

38. Of the 33 charges reported by the police to COPFS, there were 25 male and 8 female accused. Twenty-three of accused were aged between 16 and 30 at the time of the charge; 3 were under 16 years old, 3 were aged between 31-40, 3 were aged between 41-50, and 1 was over 61.

¹⁶ This evaluation is based on data taken from the 2 previous reports on the OBFTCA charges by the Scottish Government (Goulding and Cavanagh 2013, Skivington and McKenna 2014) where the total recorded number of section 6 charges between March 2012 and March of 2014 was 33. The analysis in the remainder of this evaluation are based on the total number of charges that were analysed and included in the past reports by the Scottish Government at the time the research was carried out. However, the number of section 6 charges for the period 2012-14 has since been updated on the COPFS database – this is a live system and numbers may vary from those previously published because of changes made during the course of the investigation and prosecution of a case. As such, 2 charges been added to the total charges for the period 2013-14 – the total section 6 charges is now 35.

¹⁷ The total number of charges is taken from the most up-to-date information recorded on the COPFS case management system. The research conducted last year was based on the latest information available at the time, and reported 268 charges in 2012-13 (65 charges were also made in the month the Act was in force in March preceding the 2012-13 financial year) (Goulding & Cavanagh 2013) and 203 charges reported in 2013-14 (Skivington & McKenna 2014).

Charges related to football

39. Fifteen of the total section 6 charges (45%) were reported to be related to football in some manner (i.e. the police report contained mention of either the accused as having an affiliation to a particular football club, the victim being related in some way to a football club, or the offence having occurred at a football club's stadium). One of these was in 2011-12, 8 were in 2012-13, and 6 were in 2013-14.
40. Of those section 6 charges where football affiliation of the accused was noted, Rangers and Celtic supporters featured in charges more than any other group of supporters.
41. Four of the section 6 charges included reference to religion, 2 included a racial element, and 4 referenced support of a terrorist group¹⁸.

Method of abuse

42. Twenty-four of the 33 section 6 charges (73%) were made via at least one form of internet based communications: 13 were on Twitter (39%); 9 were on Facebook (27%); and 3 were on YouTube (9%) (Total charges is higher than 33 due to 1 incident where a threat was made using more than one method of communication.) Of the other charges of threatening communication, 7 made via letter (21%); 1 was on a banner (3%); and 1 was a text message (3%). Table 1 shows the method of communication used in the section 6 charges.

Table 1: Number of s6 offences by method of abuse

| Method of Abuse | No. of charges | % |
|-----------------|----------------|----|
| Text | 1 | 3 |
| Banner | 1 | 3 |
| Letter | 7 | 21 |
| YouTube | 3 | 9 |
| Facebook | 9 | 27 |
| Twitter | 13 | 39 |

The victims

43. Out of the total section 6 charges, 27 had a specific victim of the offence; 14 of these victims were workers (e.g. bar staff or security steward) and 13 were members of the public.

Disposals

44. Court proceedings have been completed in 9 of the 33 charges. Official 'criminal proceedings' data published by the Scottish Government for the 3

¹⁸ Two of the charges that were classified for the purposes of this report as being support of terrorist groups or celebrating loss of life were also charged under section 74 with a religious aggravation.

financial years of this research 2011-14, showed that 8 resulted in convictions (a conviction rate of 89%). Three of the accused were given monetary penalties, 2 were given community payback orders, 2 were admonished, and 1 received a custodial sentence. One of the accused was accepted as not guilty.

45. With such low numbers further analysis of these offences is not possible. What these low numbers do indicate however is that section 6 is not a widely used charge, or that some relevant threatening communications behaviours are not being identified or reported under this charge. The views of practitioners on this question are explored in section 5.

Justice system practitioners' views on implementation of the legislation

46. Given the low numbers of section 6 charges, there is little experience amongst justice system practitioners of using the legislation.
47. Police respondents who had experience of using section 6 had done so with incidents of threatening communications that they perceived were relatively straightforward – section 6 was deemed as an appropriate charge in these circumstances. For example, they were satisfied that the incidents of offending communication they had dealt with were not just abusive – making it appropriate for prosecution by existing legislation – but fitted the definition of section 6 i.e. the communications consisted of material that contained a threat of serious violence that was designed to have had, or was likely to have caused, fear or alarm to a reasonable person.
48. COPFS respondents were satisfied that section 6 has gone some way to addressing threatening communications made over social media, an area in the existing legislation that was previously identified as potentially being insufficient. For example, it was believed that subsection 3, which states that an offence is committed if a communication contains an image (whether still or moving) that depicts or implies a seriously violent act against a living, dead or fictitious person, and a reasonable person would consider this image to imply the carrying out of this seriously violent act, may make it easier to prosecute persons who had posted such images on social media sites.
49. COPFS representatives were also satisfied that the inclusion of the freedom of speech clause, coupled with the use of 'common sense', would sufficiently guard against prosecutions being brought against the freedom of expression, a major concern raised during the consultation of the Act.

Summary

- Between March 2012 and March of 2014 there have been 33 section 6 charges: 5 charges in 2011-12 (1 month), 19 in 2012-13, and 9 in 2013-14.
- Of those accused of committing a section 6 offence, the majority were male (25) and the majority were aged between 16 and 30 (23).
- Fifteen of the section 6 charges were recorded to be related to football in some capacity (45%). Four section 6 charges included reference to religion, 2 included a racial element, and 4 referenced support of a terrorist group.
- Twenty-four of total section 6 charges (73%) were made via at least one form of internet based communications: Twitter (13), Facebook (9), and YouTube (3). Seven were made via letter, 1 was on a banner, and 1 was a text message (3%).
- Out of the total section 6 charges, 27 had a specific victim of the offence; 14 of these victims were workers (e.g. bar staff or security steward) and 13 were members of the public.
- Court proceedings have been completed in 9 of the 33 charges. Of these 9, 8 have resulted in convictions (a conviction rate of 89%); 3 of the accused were given monetary penalties, 2 were given community payback orders, 2 were admonished, and 1 received a custodial sentence. One of the accused was accepted to be not guilty.
- Given the low numbers of section 6 charges, there is little experience amongst justice system practitioners of using the legislation.
- Police respondents who had experience of using section 6 had done so with incidents of threatening communications that they perceived were relatively straightforward – section 6 was deemed as an appropriate charge in these circumstances.
- COPFS respondents were satisfied that section 6 has gone some way to addressing threatening communications made over social media, an area in the existing legislation that was previously identified as potentially being insufficient.

4. Impact of the legislation

50. As chapter 3 outlined, there were low numbers of section 6 charges. This chapter examines the extent to which section 6 may have had such a deterrent effect on potential offenders. A survey of 2,185 Scottish football supporters provides insight into perceptions of the online behaviour of football fans (although section 6 is not exclusively related to football-related offending, football-related threats were a key concern the Act was introduced to address). The views of representatives from justice system practitioners and internet forum administrators of football related websites and a national newspaper are also examined.

The Scottish Football Supporters Survey

General findings

51. The survey asked respondents to note their demographics, their religion and any football club affiliations. Respondents were then asked their views on a series of questions including: whether they ever visited football-based internet forums and the frequency of such visits; whether they were ever offended by anything during these visits, and if so what was it that offended them; if have they noticed any changes in frequency of any such offensive comments, and if so whether they thought this was related to the Act; and what was their opinion of how the Act had been used to deal with these offensive comments.
52. Survey respondents reported high levels of online participation with 85% saying they had ever 'visited internet sites, online forums or blogs to post messages and / or read about football (e.g. your football club's online chat forum or a fans' forum).'
53. Of these respondents who visited football-related internet sites, 51% were offended by something they saw or had read over the last two football seasons (10% were often offended, 41% were occasionally offended). These respondents were divided in their perceptions on the frequency of these offensive posts since the start of the 2012-13 football season. Forty-one percent thought there was no change in frequency, a quarter thought they had become more frequent, and around a quarter (24%) thought they had become less frequent.
54. Of those respondents who were offended by something on a football-related internet site, 45% were offended by negative references to religion, 35% by comments in support of terrorism, 33% by the celebration or glorification of the loss of life, 26% by negative references to a person's country of origin, 26% by threats of violence, 19% by negative references to a person's sexuality, 15% by negative references to a person's skin colour, and 11% by negative references to a person's gender.

55. When asked ‘what difference the Act has made in relation to threatening communications online’, 56% believed it had ‘made no difference in relation to frequency of incidents of *threats of violence* in football fan forums and elsewhere’, while 18% believed the Act had contributed to a reduction and 5% believed the Act had had an increase. Twenty-one percent of respondents claimed not to know enough about the Act to answer this question.

56. Of these same respondents, 58% believed that the Act had made ‘no difference in relation to the level of *incitement of religious hatred* in football fan forums and elsewhere.’ However, 19% believed the Act had contributed to a reduction and 7% believed the Act had had an increase. Seventeen percent of respondents claimed not to know enough about the Act to answer these questions. Table 2 demonstrates these responses.

Table 2: Difference the Act has made in relation to threats of violence and incitement of religious hatred online, in football fan forums or elsewhere

| | Threats of violence % | Incitement of religious hatred % |
|---|-----------------------|----------------------------------|
| The Act has contributed to a <i>reduction</i> | 18 | 19 |
| The Act has made <i>no difference</i> | 56 | 58 |
| The Act has contributed to an <i>increase</i> | 5 | 7 |
| Did not know enough about the Act | 21 | 17 |
| <i>Base</i> | 1513 | |

57. Although charges under the Act have been made on very few occasions since the legislation was introduced, the survey respondents still had views on how proportionately it had been used. These views might have been associated with the other section of the Act (offensive behaviour at football) that has been widely covered in the media.

58. Regarding how the Act had targeted *threats of violence* online, in fan forums or elsewhere, 24% of these same respondents believed it had done so proportionately, but 34% believed it had done so disproportionately and 16% believed the Act was targeting behaviour that did not amount to a threat of violence.

59. When asked about how they thought the Act had targeted incidents of incitement of *religious hatred* online, in fan forums or elsewhere, 23% of respondents believed the Act was being used proportionately. However, 35% believed the Act was being used disproportionately to target incidents of religious hatred, and 18% believed the Act was targeting behaviour that did not amount to incitement of religious hatred

60. There was also a lack of detailed knowledge about the Act, and around a quarter of respondents said they didn't know enough to answer these questions. Table 3 highlights these figures.

Table 3: Perceptions of how the Act has been used to target threats of violence and incitement of religious hatred online, in football fan forums or elsewhere

| | Threats of violence % | Incitement of religious hatred % |
|---|-----------------------|----------------------------------|
| The Act is being used in a way that is <i>proportionate</i> | 24 | 23 |
| The Act is being used in a way that is <i>not proportionate</i> | 34 | 35 |
| The Act is being used to target behaviour which does <i>not amount to inciting religious hatred</i> | 16 | 18 |
| Did not know enough about the Act | 26 | 24 |
| <i>Base</i> | 1513 | |

61. Of those respondents who did visit internet sites, online forums, or blogs to post messages and / or read about football, 10% stated that they had changed their behaviour in regards to what they might post online since the football season 2012/13, with 34% of these respondents claiming this was as a direct result of the Act. This suggests that the Act may have had an effect on the behaviour on a portion of one of its main target groups.

Justice system practitioners' views on the impact of the legislation

62. Most justice system practitioners believed that knowledge of the specifics of section 6 was still low in some quarters of the public. Procurator fiscal respondents in particular commented on this aspect. However while it may be the case that the specifics of section 6 are largely unknown, it was thought by many justice system practitioners that the public were largely aware in a general sense of the existence of a new law and that the 'message' of the purpose of section 6 had been received. It was speculated that this awareness could be attributed to a series of high-profile cases in the media of prosecution – whether by section 6 or another piece of legislation – of individuals who had made threatening communications.

63. Justice system practitioners believed that as a result of this raised awareness among the public, some people who were previously more likely to have made threatening communications were now 'self-policing' and were savvy enough to not make such comments, or to at least avoid making them in open forums. They believed this was evidenced in changes to online behaviour.

People shutting down their own [social media] accounts and saying 'oh, I made a wee comment when Neil Lennon was going through the bullets and bomb

scenario...’, things like that...so that kind of tells you that the self-policing side of that has worked as well and that’s predominantly what we rely on. (FoCUS Police Officer)

They’re no daft enough because if they’re clever enough to conceal themselves at the football with their scarf over their [face], or they go out their way to make sure they don’t get caught saying anything they shouldn’t be, then they’re unlikely to be going online [to post threatening communications] unless they’re steaming drunk. (FoCUS Police Officer)

64. Some interviewees also noted the absence of Rangers from the Scottish Premiership (during the time period of the evaluation). It was speculated that this may have lowered some of the previous ‘spikes’ of incidents of such behaviour associated with the big matches that Rangers were involved in – the return of these football fixtures, particularly the ones against Celtic, might therefore see a subsequent rise in offensive communications between rival fans.

Internet forum administrators’ opinions on the impact of the legislation

65. For this research Scottish national newspapers with facilities for users to comment on published materials online were approached and asked to participate in this research but just one agreed. Six online website forum administrators of Scottish football-based websites with user comment sections were also approached and 2 agreed to participate. Neither the newspaper or website forum administrator formally monitored the quantity or long-term trends in the type of threatening communications being made, meaning evidence provided here is only anecdotal.
66. These respondents thought that there had been a reduction in the number of problematic communications since the Act was introduced, although of the incidents they had observed they considered very few to constitute an offence by the definition of section 6. Similar to the justice system practitioners, they speculated that this drop could be associated with a combination of a lack of Celtic and Rangers games and also users of the site being aware of new legislation to tackle offensive communications due to the high-profile cases covered by the media.

Summary

- Around half (51%) of survey respondents were offended by something they saw or had read over the last two football seasons. Forty-one percent of respondents thought there was no change in frequency, 25% thought they had become more frequent, and 24% thought they had become less frequent.
- Forty-five percent of respondents were offended by negative references to religion, 35% by support of terrorism or terrorist group, 33% by glorification of

the loss of life, 26% by threats of violence, and 26% negative references to a person's country of origin, 26% by threats of violence, 19% by negative references to a person's sexuality, 15% by negative references to a person's skin colour, and 11% by negative references to a person's gender.

- Fifty-six percent believed the Act had made no difference in relation to frequency of incidents of *threats of violence*; 18% believed it had contributed to a reduction; and 5% believed it had had an increase.
- Fifty-eight percent of respondents believed the Act has made no difference in relation to such *incidents of incitement of religious hatred*; 19% believed it had contributed to a reduction; and 7% believed it had had an increase.
- Although charges under the Act have been made on very few occasions since the legislation was introduced, the survey respondents still had views on how proportionately it had been used.
- Twenty-four percent believed the Act was being used proportionately to target incidents of threats of violence online. However, 34% believed it had done so disproportionately, and 16% believed the Act was targeting behaviour that did not amount to a threat of violence.
- Twenty-three percent of respondents thought the Act was being used proportionately to target incidents of incitement of religious hatred online. However, 35% believed it was being used disproportionately, and 18% believed the Act was targeting behaviour that did not amount to incitement of religious hatred.
- Ten percent of respondents claimed they had changed their behaviour in regards to what they might post online since the Act was introduced. Thirty-four percent of these respondents claimed this change in behaviour was as a direct result of the Act.
- Justice system practitioners perceived there to have been a drop in offences that may have been relevant to section 6 over the past two years. This was perceived as being due mostly to a combination of high-profile prosecutions of threatening communications (by section 6 or not) raising awareness of legislation in place to deal with them which 'sent a message' to the public about the unacceptability of such actions, and a lack of Rangers and Celtic fixtures cooling the rivalry between these opposing sets of supporters. Online forum administrators also anecdotally noted a decline in football-related user-to-user offensive language and threats over the past two years.

5. Potential barriers to use of section 6

67. Chapter 4 examined the impact and possible deterrent effect section 6 had achieved. From the Scottish football supporters survey there were indications that the Act had achieved some level of a deterrent effect (albeit with some reservations as to what behaviours it had targeted and how proportionately it had been used). Many justice system practitioners also thought there had been a deterrent effect, primarily due to high profile prosecutions of threatening communications and a lack of Rangers and Celtic inter-league rivalry. These findings may partly explain why section 6 charges are low in overall number but it may be possible that there have been issues regarding its enforcement by justice system practitioners (e.g. it has been underused). For this chapter the potential barriers to the use of section 6 are examined through the perspectives of justice system practitioners.

Awareness of section 6

68. Overall knowledge and understanding of the purpose of section 6 among the front-line police officers who were involved in this evaluation was varied. There are a number of reasons as to why this may be the case.

69. As the Act was only introduced in March 2011 only one officer involved in a section 6 case had received training on the Act at Scottish Police College at Tulliallan.

70. For the majority of officers their initial introduction to the Act was done so via internally cascaded standard information packages (i.e. emails and PowerPoint presentation attachments). However, due to the large amount of information officers receive daily – pertaining to new pieces of legislation, initiatives, policies, etc. – officers interviewed for this research described how they ‘filter out’ what they perceive to be less relevant to their specific duties and zone-in on what they believe will be. This is an inevitable process and forms part of an officers necessary prioritisation of tasks. As such, for those who were not involved in football, and even some who were, the Act was not seen by many officers as being directly pertinent to their responsibilities.

You maybe get a [email] link [containing training or information updates] but to be honest we're may be getting 10 a day. You're never going to cope with that, and that's everything from your vulnerable persons' database changes to your standing operating procedure changes to new legislation that's coming - you cannot be expected to retain and deal with that, plus you've got to answer your calls. (Police Officer).

You can't possibly keep up to date with it and that's the reality of the matter. You just can't keep up with it. (Police Officer)

71. Low numbers of section 6 cases mean that inevitably justice system practitioners will rarely have first-hand experience of using the legislation, something that forms an important aspect of practitioners education. This

also reduces the opportunity for peer-to-peer learning and knowledge dissemination. A court case precedent to draw from was also reported to lead to lower confidence in using the legislation. The result may be a reluctance in the first instance to use section 6 and a desire to use more 'tried and tested' pieces of legislation.

With any new legislation there is sometimes a lack of confidence using it, because you don't want to be the person that took an offence where all the evidence was there, charged it as something else not realising that there was a specific requirement. (Football Liaison Procurator Fiscal)

That's one big thing with cops. If you're not doing it day in and day out then there's a reluctance to get yourself involved because you're not sure and you've not got that confidence and stuff like that... cops always revert to what's easy sometimes. (Police Officer FoCUS)

72. The role of FoCUS was cited by many justice system practitioners as being particularly helpful in overcoming any knowledge gaps pertaining to section 6, particularly for front-line police officers, by providing information and advice in a number of cases where an officers needed assistance. Increased training and knowledge dissemination of section 6's purpose and uses may help address many of these issues, however a lack of hands-on experience and peer-to-peer learning is unavoidable until the use of section 6 has become more widespread.

Misinterpreting the intent

73. Being part of an Act that is designated for use specifically in a football related context (section 1) appears to have influenced some officers understanding of the applicability of section 6 with a perception that it would only be relevant where football or sectarianism were present. It was believed that existing legislation, specifically section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and section 127 of the Communications Act 2003, would cover all other contexts of threatening communications.

Something like this is really only applicable to football matches. (Police Officer)

See the word 'religious'? That's the word that was very important for this case and for other cases, so there's no point if a husband and wife fought and the husband makes a comment then that's not stirring up hatred on religious grounds. That's domestic stuff and we use the Telecommunications Act – so I think the words 'religious grounds' is very specific to section 6 and unless there is a religious element then that legislation will never be used. (Police Officer)

74. Concerns were also expressed that the *threatening communications* part of the Act may even be 'hidden' behind the first part of the Act, *offensive behaviour at football*.

I think a lot of the problem is that because it says at the start of it 'offensive behaviour at football.' I think that they automatically think that it's only to do with football because when I certainly looked at it the first time I was thinking that. It's threatening communications separate from the offensive behaviour at football so I don't know they wouldn't consider just making it two separate Acts, and if they did that then it wouldn't be quite as ambiguous. (Police Officer)

75. Such misunderstanding and lack of awareness may have contributed to section 6 being underused in certain circumstances (e.g. domestic abuse situations). COPFS were also in agreement that section 6 could have wider applicability if there was increased awareness of its purpose and powers¹⁹.

The high legal threshold

76. Several justice system practitioners commented that section 6 had a very high legal threshold. For example, 2(a) of section 6, outlines that an offence is committed if a person communicates material to another person and *'the material consists of, or contains or implies a threat, or an incitement, to carry out a seriously violent act against a person or against persons of a particular description'* – whereas section 38 (1)(a) of the Criminal Justice and Licensing (Scotland) Act 2003 states that an offence is committed if a person *'behaves in a threatening or abusive manner'*.

I can imagine circumstances where you would have a threat of violence and as a prosecutor you would say 'I don't want it to fall down on that, so I'm not using this section because I'm not sure it's a threat of a seriously violent act. I'm comfortable it's a violent act but I'm not sure this is seriously violent.' (Football Liaison Prosecutor)

For a section 6 it's something you do really need to sit and think about. Have we reached that benchmark? Have we attained that level of threat to be able to libel it a section 6 and there's still 99% of the time you're struggling to reach that mark. (Police Officer FoCUS)

77. Concerns were also raised by COPFS representatives regarding part (i) and (ii) of 2(c) of section 6 which states that the person communicating the material has committed an offence if they either *intend* to cause fear or alarm, or are *reckless* as to whether the communication of the material would cause fear or alarm. Proving intention to cause fear and alarm was considered more straightforward (e.g. one person sending a threatening communication directly to another person on Twitter) however it was thought to be more problematic prove that someone was being reckless (e.g. when an indirect

¹⁹ Since these interviews were conducted guidance was published by the COPFS to prosecutors in December 2014 that recommended the wider use of section 6 by stating that it could be considered in such non-football related cases as hate crime, stalking, domestic abuse, and public order offences. Available at: http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Book_of_Regulations/Final%20version%2026%2011%2014.pdf

threat is shared on a Facebook page but does contain a link to a specific person or is sent as a direct message).

If you send [a threatening communication] to Neil Lennon and that's what it says, intention: easy. If you send it to your three best school mates, who you're always making jokes with, if you don't think they're going to be placed in a state of fear or alarm by it then arguably the prosecution have to prove that there is a likelihood that they will forward it to other people, in which case you have started that chain and therefore might be liable for it. Or that there is a likelihood that by sending it to those people, other people become aware of it, and that's a difficulty. (Football Liaison Procurator Fiscal)

Subsection c I think is the biggest barrier because where something is posted on the internet, you're posting on a public forum sometimes, it depends on somebody's mind-set as to what they think a public forum is. So, Facebook, some people's understanding is that 'this will be seen by my friends and no one else', might be right, might be wrong. Twitter, if you are Jon Snow, millions of followers then you expect that anything you post on Twitter is out there for the world to see. If you're Jim Smith that's got ten followers, do you in your head think the things you post on Twitter are going to be seen by the world? Probably not. (Football Liaison Procurator Fiscal)

78. The majority of justice system practitioners believed that the high legal threshold of section 6 meant that the majority of cases involving comparatively less serious threatening communications – those which encompass the majority of such threats – would continue to be prosecuted by existing legislation (i.e. section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and section 127 of the Communications Act 2003). For these respondents, section 6 represented an additional as opposed to a replacement charge, but is one that would most likely be used only in exemplary cases.

Evidence gathering

79. It was noted by many justice system practitioners that gathering evidence that would be sufficient to increase the chance of a successful prosecution was challenging for some section 6 cases, particularly where a threatening communication was made via an electronic device onto a social media host site.

80. Some practitioners struggled with understanding the contexts of contemporary electronic communications, particularly those which can be a combination of different mediums (text, audio, video, images), hosted on multiple sites (Facebook, Twitter, YouTube, Snapchat, Whatsapp, Skype, Instagram etc.) and transmitted from various devices (desktops, laptops,

games consoles, tablets, phones). The speed of growth²⁰, rapid evolution²¹ of these sites, and the emergence of new categories of threatening communications (e.g. ‘revenge porn’) even in the time since the Act was introduced, further exacerbates this issue. In comparison to more ‘conventional’ forms of communication – letters, phone calls – which viewed as being more straightforward cases to deal with, this milieu of internet-based communications were seen as more ambiguous, with a gradation of threat level. In these complex situations, justice system practitioners would have to draw on what training and experience they had, as well as their ‘common sense’, to make a decision based on a case-to-case basis.

81. For COPFS practitioners it was seen as being a significant asset for the prosecution’s case if the accused had admitted at police interview stage that they were indeed the person who sent the threatening communication. This was particularly true with cases involving internet based communications, (and internet based crimes in general) where managing to infer that someone was the sender without a confession was a considerable hurdle for prosecutors to overcome.
82. Police officers also described how gathering evidence for section 6 cases where an electronic device was used was potentially a complex and difficult process due to the issues associated with gaining access to, and information from, organisations and service providers that are substantial in size and international in scope. This was the case for internet crime in general and not just related to section 6 offences.
83. It should be noted that many of the concerns highlighted above relate to not only section 6 but internet-based crime in general. Almost all justice system practitioner respondents stated that they believed the increasing frequency and complexity of such crimes will have potentially significant knock-on effects for the justice system. In such circumstances, section 6 may become more and more relevant.

Summary

- Overall awareness of the Act among justice system practitioners respondents was varied. This may be due to: lack of suitable training of justice system practitioners; misinterpretation of the purpose of the Act (believing it to be football related only); and lack of hands-on experience.
- Respondents commented that the high legal threshold of section 6 meant that existing legislation would remain appropriate for the majority of cases involving threatening communications – section 6 represented an additional as opposed to a replacement charge, specifically one that would most likely only be used in extreme cases.

²⁰ <http://www.emarketer.com/Article/Social-Networking-Reach-Half-UK-Population-This-Year/1010032>

²¹ <http://stakeholders.ofcom.org.uk/market-data-research/other/research-publications/adults/adults-media-lit-14/>

- Gathering sufficient evidence that would lead to a successful prosecution was challenging for some section 6 cases. This was particularly the case where a threatening communication was made via an electronic device onto a social media host site and there was no admission of guilt from the accused.

6. Conclusions

- The intention of the legislation was to be a deterrent to people who may be likely to post threats on social media and in other places, but also to be a means of more effectively dealing with threatening communications made via social media and other types of threats.
- Section 6 charges are comparatively low in overall numbers (33), when compared to section 1 of the OBFTCA (538).
- These low numbers indicate that section 6 is not a widely use charge by justice system practitioners. This may be because section 6 offences are not occurring, or not being identified and reported. Because of a lack of data measuring the prevalence of these types of threats in society, generally it is difficult to assess the extent or proportion of charges that have occurred which could potentially have been effectively dealt with through section 6.
- Some justice system practitioners were more positive regarding its clarity and its suitability for certain offences, and it seems possible that there may be other opportunities for the legislation to be applied in appropriate circumstances in the future, provided practitioners feel confident and knowledgeable about it.
- There is mixed evidence from this evaluation that football fans – one of the Act’s potential main target groups – believed there to have been a reduction in threatening communications since the Act was introduced with 41% saying there had been no change in the frequency of offensive comments. A quarter of respondents (25%) said these comments had become more frequent and a similar proportion (24%) said they had become less frequent.
- However, even though there were a low number of charges, there were less than favourable responses amongst survey respondents with regards to how the Act had been used to achieve this effect with many believing it had been used disproportionately and/or was targeting behaviour that was not relevant.

Appendix

APPENDIX A: Schedule for interview with police officers

1. General

How long have you been in the police and what departments have you been in?

How are officers made aware of a new piece of legislation and resulting police powers?

Was this the same process for OBFTC Act? Proportionately speaking, how much of this training was dedicated to S6 specifically?

Do you know much about the work of the Football Coordination Unit?

2. The case

Can you tell me about the case you were involved with?

- how did it come to your attention
- did the individual have previous / was he known to police
- why was S6 the appropriate charge and not another
- how did they react to being charged under S6 i.e. were they aware that what they had done was an offence
- do you feel your colleagues have the same knowledge of S6 and would have used it in this case?
- if you're not sure about whether S6 is relevant who would you speak to, to check?
- have you heard of any of your colleagues using S6 in other instances
- have you seen any other incidents where S6 might have been applicable

3. Necessity?

The number of prosecutions under section 6 is low. Why do you think this might be?

When compared to the legislation that was already in place, what does S6 provide that the others didn't?

Have you received any feedback from the Procurator Fiscal regarding how the police are charging people?

4. **Freedom of Speech?**

Do you have any concerns that the legislation infringes, or has potential to do so, on Freedom of Speech?

Have you had any instances of people claiming to be offended and seeking to use the new powers to effectively punish opposition fans? i.e. has there been many frivolous attempts at making using S6?

5. **Clarity?**

Do you feel the wording of the legislation clear for your officers?

Has any of your colleagues mentioned to you their concerns to you regarding the issue of clarity?

6. **Sentencing / punishment?**

Do you think the sentencing available is fitting for the crime?

Conversely, with a maximum of 5yrs for a section 6 compared to a maximum of 7yrs for inciting racial hatred, is religiously aggravated offence seen as less serious?

Are there safeguards in place to prevent young persons from coming into the justice system unnecessarily, particularly in relation to cyber-bullying?

Does the sentencing take into consideration the context of the threat? i.e. is a letter more severe than a twitter post? The distinction between a 'real identity' and 'online identify'

Do you think it sent any sort of message across to the public about what is acceptable behaviour?

Do you think people are aware they can get caught for making threatening communications across social media?

7. **Does it tackle the issue?**

Does singling out of stirring up of "hatred on religious grounds" potentially send a message that this crime is more severe than others e.g. racist, homophobic?

Do you have any concerns regarding the exemption from the legislation of 'unrecorded speech'?

8. **Resources?**

If there was a significant increase in charges under section 6 would this require more police resources?

Will resources potentially be taken away from other aspects of policing?

Do you feel that officer have the ability and training to keep up with constantly changing social media environment?

In your opinion, has the lack of Old Firm games had any influence on the current situation regarding the use of the Act?

9. **Final comments**

Compared to other recent pieces of legislation

If you were to change any aspect of S6 that would make it more useful for to you and your officers what would it be?

Is there anything else you would like to add?



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