

An evaluation of Section 1 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012



CRIME AND JUSTICE

**An evaluation of section 1 of the Offensive Behaviour at Football
and Threatening Communications (Scotland) Act 2012**

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Executive summary

This summary sets out key findings from a multi-method research study to evaluate the implementation and impact of new powers introduced in Section 1 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. The research aimed to provide evidence as to the Act's impact on disorder and offensive behaviour at football matches.

Research Objectives

The objectives for the research as outlined in the Scottish Government research specification document were as follows:

- To assess the implementation of the legislation and to identify any barriers that may be impeding its effectiveness;
- To evaluate whether the atmosphere and behaviour at and around football matches has improved since the introduction of the Act;
- Relatedly, to assess whether the Act has also resulted in a reduction in offending at and around football matches; and finally,
- To examine supporters' perception of the legislation, in terms of their understanding of its content and acceptance of its objectives.

Research Methods

The key elements of the mixed methods study were:

- Two online surveys of supporters of Scottish football clubs were conducted as part of the study. The first survey was 'live' between 20 August and 20 September 2013, the second between 22 July and 5 August 2014.
- The surveys of Supporters Direct Scotland members and other football supporters may be considered a reasonable basis for hypothesising about the views of Scottish football supporters in general. In terms of sample characteristics, the vast majority were male, white and born in Scotland. There was greater diversity in terms of age. Responses were received from all 42 SPFL clubs, with the four largest Glasgow and Edinburgh clubs the best represented in the 2014 survey. There was a fairly even split between season ticket holders and non-season ticket holders.
- Interviews and focus groups with those involved in the implementation and enforcement of the legislation, including Sheriffs, Procurators Fiscal, Police Officers, and Club Security Officials.
- Meetings and focus groups with football fans and with representatives of supporters groups.

- Analysis of secondary data sources, including data held by the Crown Office, the Scottish Government and Police Scotland.
- Some limited observational research and informal interviewing in and around stadia on match days was also undertaken.

Key findings and recommendations

Resources and initiatives in support of the legislation

The implementation, impact and perceptions of s. 1 were intertwined with complementary initiatives relating to policing (the establishment of the Football Coordination Unit Scotland (FoCUS)) and prosecution (the establishment of Football Liaison Prosecutors). These resources were established prior to the enactment of s.1 and almost certainly helped facilitate the Act's quick adoption.

Because of these closely inter-related initiatives, judgements about the impact of s.1 are impossible to disentangle from judgements about how s.1 was implemented.

In terms of pre-Act resources, amongst police stakeholders FoCUS was well-regarded for helping local police divisions work through the operational and tactical implications of the legislation and for providing training and other forms of support. FoCUS was seen to have helped local divisions mainstream the operational tactics employed by FoCUS officers. As such FoCUS was no longer seen primarily as a unit that was regularly required to provide direct operational support. Rather, its value was perceived to be in providing central coordination, in particular around football-related intelligence and ongoing training, as well as being a centre for the development of relevant police policies.

The police highly appreciated the work of Football Liaison Prosecutors who were located in the Crown Office and Procurator Fiscal Service (COPFS). They were seen as being a readily approachable point of contact within their regions, and they were viewed as actively helping prepare and progress s. 1 cases.

The implementation and enforcement of the legislation

Fans and stakeholders alike remarked on the very visible and high-profile introduction and implementation of the Act.

A primary value of the Act for police stakeholders was that it gave them added purpose, and added clarity, when dealing with sectarian behaviour associated with football. In particular the greater clarity around offensiveness related to demonstrating support for terrorist organisations was seen as valuable.

In the enforcement of s. 1 the dominant focus was on offences occurring within stadia, though towards the end of this evaluation a number of high-profile cases outside stadia had received media attention. Given the recent evidence that football was the most commonly mentioned factor that people believe contributes to sectarianism in Scotland (Hinchliffe *et. al.*, 2015), limiting the direct exposure of bystanders to any sectarian behaviour by individuals on route to (or from) a football fixture may be particularly appropriate.

Policing and stewarding was still considered to be very inconsistent at different grounds, with inexperienced police officers and stewards either failing to act on offensive behaviours, or enforcing the legislation in a manner that was viewed as adversarial by fans.

Fans and police officers alike placed value on experience, and on known police officers and stewards who could build up a rapport with fans. Such individuals were considered more likely to be able to 'head off' offensive behaviour through proactive interventions and influence.

Tensions around the introduction of the Act however - and in particular the extent to which certain sections of fans felt over-policed, and subject to disproportionate levels of surveillance, searches and public-order style policing - was considered to have placed a strain on police, club and fan relationships at certain clubs. This was commonly remarked upon by both fans and police officers. For some experienced police officers a consequence of this strain was that it made it harder to exert a positive influence on fans, and in particular to get information from fan groups about more serious criminal behaviour, notably violence associated with risk groups.

After a long period where football-related violence was perceived to be in decline, a number of football intelligence officers and senior police officers confirmed that there had been a notable upsurge in football-related violence by certain 'risk groups'. This activity was usually located well away from actual football stadia.

A concern of some police officers was that the focus of police resources on in-stadia disorder and offensive behaviour was at the expense of resources being available to appropriately monitor more violent risk groups. It was indeed notable within this research how groups of fans in stadia who were associated with enthusiastic singing and displays (and potentially offensive behaviour), were now commonly referred to as 'risk groups'. This conflation of groups of fans associated with potentially offensive behaviour with those engaged in much more serious, violent offences, is problematic if it implies specialist police resources (such as surveillance and intelligence assets) being diluted or diverted, or if it exposes fans who hitherto were not regarded as a 'problem' to less restrained policing strategies.

Intelligence resources were also, at a local level, still highly variable in terms of quality. Football intelligence officer roles, together with those other supporting roles that were key to this function (such as police match-day ‘spotters’) were still, as previously identified in Hamilton-Smith *et al*, (2011), subject to patchy investment.

Charges and prosecutions under section 1 of the Act

Fan perceptions that the Act primarily focused on sectarianism were borne out in official statistics and stakeholder interviews, with a majority of s. 1 charges in both of the first two years of the Act being made against supporters of Rangers or Celtic, and with over 50% of s. 1 sub-charges between 2012 and 2014 involving offensiveness associated with religion, support for terrorism or celebrating loss of life.

Both fan and some stakeholder respondents in our qualitative research spoke of disquiet at the extent to which the Act was perceived to be targeted at younger fans. Some felt that younger fans were not as responsible when it came to the ‘transmission’ of offensive songs that had been sung, and taught to them, by older family members and friends. Criminalising younger fans in these instances was seen as disproportionate.

Whilst younger fans (in particular those under 20) constitute a higher proportion of people charged under s. 1 over time (constituting 46% of charges in 2013/14 – 95 charges, compared to 36% in 2012/13 – 96 charges), this is only a *proportionate* increase not a numerical one, and would appear to reflect a steep fall in the number of older fans being charged. Charges against older fans (aged 31 and above) fell from 71 in 2012-13 (26% of all charges) to 24 charges in 2013-14 (12% of all charges). This may be due to older fans complying with the legislation more quickly, though some fan-respondents argued that it was because younger fans were an ‘easy target’ for enforcement.

The ‘success’ of the Act in terms of successful prosecutions under s. 1, has notably faltered in the last year, with the published rate for s. 1 prosecutions across Scotland dropping from 73% to 52%. Our analysis would suggest that this drop in convictions may not only be an issue for s. 1 offences, but also for other football-related charges such as breach of the peace.

The time taken, on average, to progress and conclude football-related charges, appears to be particularly lengthy. Again, this does not pertain exclusively to s. 1 charges. In our qualitative research the length of time taken to progress cases was perceived as a source of frustration and unfairness by some fans.

Sheriffs’ views were divided on the Act, ranging from strongly in support to emphatically critical. Most often, though, they expressed a mixture of support

for s.1 and criticism. Supportive comments focused on the aims of the Act, tackling what some viewed as a serious problem. Some sheriffs however were concerned about s.1's clarity and human rights implications. Some also felt that the quality of evidence in cases brought under section 1 was sometimes weaker than it could be, with one emphasising that he would appreciate expert witness evidence on the meaning of behaviours labelled as offensive.

Supporters' awareness and general perceptions of the legislation

Awareness of the Act was high in our fan surveys - at around four in five of all supporters (83% had heard of it in the 2014 survey) and higher still among supporters of Celtic and Rangers. Awareness was also several percentage points higher in 2014 than in 2013.

A slight majority of supporters surveyed in 2014 (55%) reported sometimes being offended by things they heard other supporters shouting, chanting or singing, but 50% also agreed that "people go to football matches to let off steam and that what they say should not be taken seriously".

Where offence was likely to be taken, surveyed supporter dislikes were broadly in line with the objectives of the Act. There was broad consensus that it is offensive to sing songs or to make remarks about people's religious background or beliefs (85% agreeing with this statement), or which celebrate the loss of life (90% agreeing), or which support terrorist organisations (82% agreeing).

The formal aims of the Act were to focus on a range of offensive behaviours, typically conceived as hate crime, such as offensiveness targeted on the basis of religion, sexuality, race, or professing support for terrorism. However, the Act was developed and introduced in a political and media environment where the legislation was primarily seen as a tool to address sectarian offensiveness. Fans and stakeholders in our qualitative research largely viewed the Act in this way.

In our qualitative research, fans who did not follow Rangers or Celtic often described the Act in terms of being focussed on supporters of those two teams, and for many this seemed justifiable. However, it is to be noted that some of these same fans also described behaviours and 'banter' occurring elsewhere that would just as appropriately merit attention under the Act (e.g. racist and homophobic remarks and singing). Indeed, our supporters' survey demonstrates that fans did sometimes encounter such offensiveness. For instance in 2013/14, 22% of supporters attending away games heard negative references to a person's sexuality and 16% heard negative references to a person's skin colour.

Fans in the qualitative research also provided slightly contradictory responses when characterising their understanding of the s.1 offence. It was often

claimed that what songs or behaviours fell under the remit of the legislation was ambiguous and uncertain. When probed however, it did appear that most respondents knew exactly what behaviours would potentially contravene the Act. This ambiguity seemed to refer to disagreements about whether certain 'borderline' songs, words or gestures *should* fall under the Act (and a desire for this to be definitively clarified) and second, uncertainty about whether songs or behaviour would lead to enforcement action in different locations and/or at different football grounds (i.e. their uncertainty referred to inconsistencies in enforcement).

Where songs or other acts were disputed in terms of their offensiveness, grounds for dispute rested on two areas of ambiguity. First, songs, chants or displays that made mention of organisations or movements that, at some point, could have been associated with terrorism, but which at other points in time could be associated with legitimate organisations and/or political standpoints. Second, expressing a cultural identity, which whilst it could not be said to *explicitly* communicate any hatred or opposition to another's culture, ethnicity, politics, or religion, could nevertheless be construed as offensive simply because that cultural identity was viewed as intrinsically 'oppositional' or provocative by others.

The role of clubs

In the qualitative research, fans had different perspectives on the role of their clubs in relation to the legislation. Whilst some fans had received helpful communication from their clubs when the Act was introduced, others felt that their club was unclear or 'hedged' their advice on the implications of s.1. Conversely club officials felt unable to offer advice in some instances in the absence of legal precedent.

Whilst acknowledging that clubs had done good work in the past, in particular around sectarianism, some fans felt that clubs needed to take more responsibility for addressing these issues amongst their fan base.

Impact of the Act – perspectives and experiences

It was acknowledged by fans and stakeholders alike that the Act was introduced in a way that gave it a high profile and made a rapid impact. Whilst this generated hostility amongst some fans, it was also acknowledged by some fans and stakeholders that this had an immediate impact on behaviour.

In terms of the prevalence of specific forms of potentially offensive behaviours (whether those 'criminal' or not) encountered by surveyed supporters, by far the most common was swearing at players and officials, followed by swearing at other supporters.

Around a third (28%) of home supporters said they had heard negative reference to a person's religious background during at least one game in the

2013/14 season, higher than the proportion that had heard negative reference to a person's skin colour (8%), country of origin (19%), gender (10%) or sexuality (19%).

The reported prevalence of these verbal behaviours was broadly stable between the 2012/13 and 2013/14 seasons. There was an increase, however, in potentially offensive non-verbal behaviours in 2013/14 - especially letting off flares, throwing of missiles and the displaying of offensive banners (see Table 4.1 for more details).

A better measure however of long-term changes in behaviour were questions that asked fans to judge the prevalence of certain behaviours in relation to 'previous seasons.' With the sole exception of letting off flares, in both surveys, supporters were likely to view each specific type of behaviour as being *less common* than in previous seasons, as opposed to being more common. For example, 40% of home supporters felt negative references to religious background were less common in the 2013/14 season than in previous seasons, while only 3% felt it was more common. 56% of supporters felt that the level of negative references to religious background was about the same as in previous seasons.

Fans and stakeholders in the qualitative research mostly held similar views, with fans of Rangers and Celtic in particular noting a marked decline in certain types of offensive behaviour at home games.

Impact of the Act – official data

Official data on football-related offending would seem to lend support to these fan and stakeholder judgements, indicating a marked decline in football-related charges, including hate crime charges, between the first and second full years after the introduction of the Act, and with a 24% reduction in s. 1 charges overall between 2012-13 and 2013-14.

Positive as these trends are, it is impossible to determine whether some, or any of these reductions are attributable directly to the Act (though some fans and police officers clearly felt that the Act had had an impact), to the policing or prosecutorial resources that were put in place in the year before the Act, or indeed to the broader societal context which has witnessed sustained declines in violence and disorder more generally over a number of years.

Recommendations

It is not in the remit of the evaluation to engage in political and normative debates about the continued existence of the Act. Our remit is to comment on the Act's 'effectiveness' and to suggest ways in which that 'effectiveness' might be enhanced.

Recommendation 1 (R1) The formal objectives of the Act are to address a variety of hate crimes, not just sectarianism. Acknowledging that there appears to have been a recognised reduction in sectarian-associated offences, this broader focus needs to be strengthened.

R2 Careful consideration needs to be given to how best to improve relationships and trust between supporters groups, clubs and the police. This is critical if recent gains in terms of reductions in criminalised activity are to be consolidated.

There is already evidence that fans within stadia are self-policing each other to an extent. The more fans identify with the aims and legitimacy of the Act, and the more that they approve of (and identify with), official actors in terms of how they *enforce* the Act, the stronger one would expect this self-policing to be.

R3 In terms of police and club operational tactics, a clearer demarcation needs to be made between violent risk groups and other sets of fans who are *at risk* of engaging in non-violent, offensive behaviour.

R4 Clubs, in particular, need to be re-engaged with work in this area, for instance taking forward educational initiatives, and having a much closer dialogue with supporters groups.

R5 Clubs and the police authorities should continue to focus on balancing the need to hold secure matches, free from offensiveness and disorder, whilst ensuring a consistent and proportionate response to the policing of more vocal and enthusiastic fan groups.

Grievances about inconsistent treatment were particularly emphasised by those supporters who travelled to away games. In our 2013 survey 81% of away supporters agreed that they were treated very differently at different stadiums by stewards and police. Fans and police officers alike valued more experienced officers and stewards in part, precisely because, they would act with more consistency.

R6 Models of good stewarding and local policing should be identified and strengthened.

R7 Given the great range of behaviours encompassed by the Act (with the types of offensiveness covered ranging widely in terms of seriousness), greater consideration should be given to a more nuanced set of responses, shading from club-focussed sanctions and diversionary measures that preclude the need to impose a criminal record, through to appropriate criminal penalties for more serious or incorrigible offenders. For instance, consideration should be given to using diversionary sanctions for less serious s. 1 offences (and for first time offenders) such as short football banning orders (ideally combined with match period sign-on conditions to maximise effectiveness).

R8 More serious s. 1 cases should receive faster consideration by relevant agencies, and should reach a conclusion more quickly. This, particularly if combined with the previous recommendation, would potentially improve confidence in the fairness and proportionality of charges made under s. 1 of the Act.

1. Introduction

1.1 This report presents findings from the Scottish Government-commissioned evaluation of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. This evaluation was conducted by a research team drawn from the University of Stirling, the University of Glasgow and ScotCen Social Research. The evaluation formally started in June 2013 and concluded in early 2015.

1.2 The evaluation used both quantitative and qualitative research methods to explore the introduction, enforcement and impact of the legislation, gauging the perspectives of a wide range of stakeholders (e.g. fans, supporters groups, clubs, football authorities, the police, procurators fiscal, the judiciary, and other interested parties).

1.3 Central to this report are the findings from both sweeps of an online survey of supporters of Scottish football clubs, carried out in August/September 2013 and July/August 2014. The first survey focused on supporters' experiences of attending football matches during the 2012-13 season, including whether they had witnessed certain types of behaviour that might be deemed 'offensive'. The second survey was almost identical and focused on supporters' experiences during the 2013-14 season, in an attempt to trace changes that might have arisen from the new legislation following the initial 'bedding in' period. In both sweeps, supporters were also asked about their awareness of new legislation relating to offensive behaviour at football matches which came into force in the spring of 2012. This quantitative research was complemented by qualitative research with supporters through interviews, focus groups and some limited observations of fans' experiences at football matches.

1.4 The rest of this chapter explains the background to the legislation relating to offensive behaviour at football and why the evaluation was commissioned by the Scottish Government. The second chapter provides more detailed information about how the research was carried out. The remainder of the report summarises some of the key findings emerging from preliminary analysis of survey and from other data.

Background

1.5 The Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (hereafter known as the Act) was passed by the Scottish Parliament on 14 December 2011, received Royal Assent on 19 January 2012 and came into force on 1 March 2012. The Act was introduced following concerns about a perceived increase in various 'offensive' behaviours within the context of football. As stated in the policy memorandum:

“In summary, it is a critical assumption of this Bill that there is something very specific and increasingly unacceptable about attitudes and behaviour expressed at football matches, whether that be “sectarian”, racist or homophobic.”¹

1.6 Although the Act is designed to tackle a range of hate crimes and is not restricted to tackling sectarianism, the Scottish Government specifically believed the existing legislation and common law provisions to be inadequate to deal with the perceived increase in sectarian-related behaviours in and around football grounds.² After several years of comparatively improved behaviour and atmospheres at domestic matches (Hamilton-Smith et al. 2011), the 2010-11 season saw a number of controversial incidents, both on and off the pitch, and mostly associated with either Rangers or Celtic (or both). The two teams met on seven occasions during the season, and the police reported a significant impact on their resources as a result of this. A period of heightened political and media focus followed. Both Celtic and Rangers fans were warned by Strathclyde Police and the football authorities about football-related violence and singing sectarian songs, and in April 2011 Rangers were fined £35,000 by UEFA, and supporters banned from one away game, after their fans sang sectarian songs during a Europa League match against PSV Eindhoven.³ A Scottish Premier League game between Rangers and Celtic on 20th February 2011 *reportedly* saw 229 related arrests⁴ in the Strathclyde police force area. This was followed by a highly publicised Scottish Cup match between the same two clubs at Celtic Park on 2nd March 2011 which saw three Rangers players sent off, a number of on-pitch confrontations between players and coaching staff, 34 supporters being arrested inside the stadium (including 20 for alleged religiously-aggravated breaches of the peace) and a reported total of 187 related arrests.⁵

These statistics, though certainly higher than for an average game between these two teams, were not especially high by historic standards for this fixture⁶. However, on this occasion the increased media and political spotlight, and a growing view

¹ Scottish Government, Policy Memorandum on the Offensive Behaviour in Football and Threatening Communications (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 June 2011.

² Policy Memorandum, as above, p.1

³ <http://www.bbc.co.uk/sport/0/football/13218273>

⁴ These figures do need to be treated with some caution, as whether these 229 arrests in the wider Strathclyde police force area could genuinely be attributed to the Rangers-Celtic match is a contentious assertion. The same caveat applies to the figures reported for the Cup match on 2nd March 2011.

⁵ <http://www.telegraph.co.uk/sport/football/competitions/scottish-premier/8360710/Celtic-v-Rangers-Strathclyde-Police-to-demand-Old-Firm-reform-after-shameful-scenes.html>

⁶ By way of illustration, two typical, well attended games between these two teams at Celtic Park in the 2006-07 season resulted in 10 and 16 stadia arrests respectively (ACPOS match reports figures for games on the 23th September 2006 and the 11th March 2007). However, by way of contrast the league championship decider on the 2nd May 1999 resulted in 113 arrests at Celtic Park (http://news.bbc.co.uk/1/hi/sport/football/scottish_premier/334291.stm), whilst the famous 1980 Scottish Cup final encounter on the 10th May at Hampden Park resulted in over 200 arrests.

that the social and policing costs of such fixtures were no longer acceptable, meant that shortly after the match a summit was requested by the police.

1.7 The police specifically argued that there was a correlation between Rangers-Celtic fixtures and a spike in reported instances of domestic violence, and this was widely covered by the Scottish media. The summit was subsequently convened by the First Minister. Representatives of Celtic and Rangers, the Scottish Football Association (SFA) and Strathclyde Police duly developed a plan to tackle behaviour related to Rangers-Celtic fixtures.⁷

1.8 At the same time, an ongoing series of hate crime incidents targeted at certain high-profile figures in Scotland was also the subject of intense media focus. Neil Lennon, the Celtic manager at the time, received death threats and bullets in the post. Attempts were also intercepted to send parcel bombs to Lennon, the late Paul McBride QC and MSP Trish Godman (both high-profile Celtic-supporting Catholics), as well as to Cairde na hÉireann, an Irish Republican group based in Glasgow. As a result of these incidents, sectarianism in Scotland, and its perceived links to football, emerged as a key item on the political agenda after some years of relative quiet. From this increased focus on tackling offensive behaviour at and around football, with a specific concern about sectarianism, various measures were put in place by the Scottish Government. A Joint Action Group was set up following the summit, and met throughout 2011 “with a focus on supporting the further development of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act and to consider and agree further measures to tackle unacceptable supporter conduct” (<http://www.gov.scot/Topics/archive/law-order/sectarianism-action-1/football-violence/football-summit/JAG>). It should be noted that these initiatives were formally separate from, though associated with, a wider range of Scottish Government-supported activities to address sectarianism. Most notably, an independent advisory group was established to conduct its own investigation into sectarianism, resulting in the production of a high-profile interim report which was submitted to Ministers in December 2013, which presented its final report in May 2015⁸. Under the auspices of this advisory group, Government funding was also provided for community-based and educational initiatives aimed at tackling sectarianism in Scotland and for commissioning of research into various aspects of sectarianism. A multi-pronged approach to sectarian and other offensive behaviours thus appeared to be the government’s intention, with behaviour at and around football being one aspect of it.

1.9 In June 2011, the Scottish Government published proposals for new legislation to curb offensive behaviour around football matches, with particular emphasis on ‘sectarian’ behaviour:

“The objective of the Bill is to tackle sectarianism by preventing offensive and threatening behaviour related to football matches and preventing the

⁷ <http://www.bbc.co.uk/news/uk-scotland-glasgow-west-12670175>

⁸ See <http://www.gov.scot/Publications/2015/05/4296>

communication of threatening material, particularly where it incites religious hatred.”⁹ (Policy Memorandum).

1.10 The legislation was also designed to deal with threatening communications, thereby responding to the incidents mentioned above. The government’s initial plan was for legislation to be in place before the start of the 2011-12 football season and it sought to achieve this by recourse to emergency legislation procedures.¹⁰ However, concerns were raised regarding the need for a better consultative process, and the passage of the Bill was delayed to allow time for wider views to be sought and for further debate by Parliament.¹¹ The Bill received Royal Assent on 19 Jan 2012 and came into force on 1 March 2012, towards the end of the 2011-12 football season.

Overview of Act

1.11 The Act, as discussed above, dealt with two key problems: (1) offensive behaviour in and around football matches and (2) threatening communications (threats of serious violence or incitement to hatred which have been made in a recorded format). The second element of the Act (threatening communications) is broader and need not involve either sectarianism or football.

1.12 This research is concerned only with the former, which is dealt with in Section 1 of the Act. This creates an offence of engaging in behaviour ‘in relation to a regulated football match’ which ‘is likely to incite public disorder’ and which is hateful, threatening or is ‘other behaviour that a reasonable person would be likely to consider offensive’. Hateful behaviour is defined as ‘expressing hatred’ of, ‘stirring up hatred’ against, or ‘motivated by hatred’ of (whether wholly or partly) an individual or a group of persons, based on their membership (or presumed membership) of certain groups. These include a religious group or a social or cultural group with a perceived religious affiliation or a group defined by reference to one of the following: colour; race; nationality (including citizenship); ethnic or national origins; sexual orientation; transgender identity; disability.

1.13 ‘Other behaviour that a reasonable person would be likely to consider offensive’ is not defined in the Act, but the Lord Advocate’s Guidelines state that ‘Officers should have regard to **proportionality**, **legitimate football rivalry** and **common sense** when assessing whether the conduct would cause offence to the reasonable person.’ They give examples of flags, banners, songs or chants ‘in support of terrorist organisations’ or which ‘glorify, celebrate or mock events involving the loss of life or serious injury’.¹² The analysis of the operation of the first

⁹ Scottish Government Policy Memorandum on the Offensive Behaviour in Football and Threatening Communications (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 June 2011.

¹⁰ <http://www.bbc.co.uk/news/uk-scotland-13796044>

¹¹ <http://www.bbc.co.uk/news/uk-scotland-13916556>

¹² http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Lord_Advocates_Guidelines/Lord%20Advocates%20Guidelines%20-%20The%20Offensive%20Behaviour%20at%20Football%20and%20Threatening%20Communications%20Scotland%20Act%202012.PDF (emphasis in original).

year of the Act found that all of the charges under this category noted behaviour which was said to refer to 'terrorism and terrorist organisations'.¹³

1.14 The offence requires the Crown to prove *either* that an individual's conduct was likely to provoke public disorder; *or* that this would have been likely but for other circumstances. As noted above, the Act provides that 'behaviour would be likely to incite public disorder' if public disorder would be likely to occur but for the fact that:

(a) measures are in place to prevent public disorder, or

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

1.15 Thus, it is not a defence to a charge of criminal conduct that rival fans had been segregated, or that police or stewards were present to maintain public order. It is this element that has led to the section being described by some as overly broad. Lord Brodie, speaking on behalf of the Appeal Court following the decision that a sheriff had erred in law when he acquitted Joseph Cairns, who had been charged with singing pro-IRA songs at a match between Ross County and Celtic in Dingwall, said that the Parliament had created "a criminal offence with an extremely long reach"¹⁴.

1.16 Section 1 covers not only conduct *at* a regulated football match, but also conduct '*in relation to* a regulated football match'. It therefore covers behaviour during a journey to or from a match (including on public transport), behaviour in pubs or clubs or other places that are showing televised football, and matches that are played abroad if they include a Scottish club. A 'journey' includes overnight breaks and it applies not only to persons attending a match but also to others who were not intending to do so. The Lord Advocate's Guidelines advise that this includes persons who participate in such behaviour 'alongside fans who are travelling on such a journey'. These others need not previously have been aware of the match. There has yet to be an Appeal Court judgment of whether their behaviour also needs to be in relation to the regulated football match, or whether it is enough that they engaged in some way with those who are on that journey.¹⁵

1.17 Section 1 does far more than place common law breach of the peace on a statutory footing or restate section 38 of the Criminal Justice (Scotland) Act 2010. It targets and labels behaviour related to football and provides for the courts to take account of that in sentencing decisions. The targeting of football has been supported by additional police and prosecution resources introduced in March 2011 (specifically, the appointment of Football Liaison Prosecutors, procurators fiscal

¹³ Amy Goulding & Ben Cavanagh *Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act (2012)* in 2012-13 Justice Analytical Services, The Scottish Government, 2013, 3.10. <http://www.scotland.gov.uk/Resource/0042/00425855.pdf>

¹⁴ <http://www.scotcourts.gov.uk/opinions/2013HCJAC73.html>

¹⁵ See further *HMA v Blance* [2013] HCJAC 131 <https://www.scotcourts.gov.uk/search-judgments/judgment?id=098586a6-8980-69d2-b500-ff0000d74aa7>

who are football specialists but also retain a wider role as procurator fiscal deputies) and the creation of a Football Coordination Unit for Scotland (FoCUS))¹⁶. The aims of these measures were to increase the specialist resources available to police football-related behaviour, and to improve the quality and consistency of decision making from the point of arrest to the point of sentence. The other major legal change is the section 6 offence of communicating threats of serious violence or threats inciting religious hatred, but this is not the subject of this report.

1.18 It is important to note that the Act does not use the word ‘sectarian’ or ‘sectarianism’, instead making use of more established terms in Scots law such as hatred based on religion, race, sexual orientation, disability and so on to capture the various behaviours that are dealt with in section 1. The term ‘sectarian’ is problematic and highly contested and has not been used in any criminal legislation in the UK. However, both media and parliamentary discussions around the legislation continue to focus on ‘sectarian’ behaviour.

The Act makes provision for prison sentences of up to five years for those convicted on indictment of either the offensive behaviour at football or the threatening communication offences.

Discussion of the Act

1.19 As previously noted, the Act has been the subject of some controversy since its inception. Although it is not our intention to recap those arguments in detail – our remit is to evaluate the Act as it has been implemented – the key issues raised through these discussions should be noted. The main criticisms of the Act concerned its putative freedom of speech implications, the failure to define ‘offensive behaviour’ and a lack of precision in some other elements¹⁷, and whether or not there was a gap in the existing law which justified its introduction. Some of these criticisms were addressed in Committee and during the Parliamentary debates,¹⁸ but not all of them were and it is unsurprising that the first eighteen months of the Act’s existence have been controversial. Although there have been many successful prosecutions, many have failed. It was not possible to find out whether this has been due to weak evidence being provided to the court, or

¹⁶ The majority of these resources were in fact introduced sometime before the enactment of the legislation which may account for the speed with which the new powers were used in courts.

¹⁷ A key area of concern focused on a test of offensiveness being based on the broad formulation of that which ‘a reasonable person would be likely to consider offensive’, and on the legislation relating to offences not only at a regulated football match, but also ‘in relation to’ a football match (with the single exclusion of offences committed within domestic premises). Among others, the Scottish Human Rights Commission expressed concerns over such elements on the ground that they made the application of the legislation unclear and imprecise, potentially contravening Article 7 of the European Convention on Human Rights. See <http://scottishhumanrights.com/archive//footballconsultationAug2011>. An Article 7 argument has since been considered and rejected by the Appeal Court in a recent case on s.1, *Donnelly and Walsh v PF Edinburgh* [2015] HCJAC 35. It dealt however only with Article 7 in the context of a particular song, one already considered in other case law. No pronouncement was required to be made on the wider question.

¹⁸ For comments and responses, see the Justice Committee Report at http://www.scottish.parliament.uk/S4_JusticeCommittee/Reports/OFBTC_Bill_FINAL.pdf

because sheriffs have taken contrary views to fiscals on whether certain behaviours are caught by the Act, but some have been successful despite the sheriffs' criticisms of either the breadth of the Act or its use in the particular circumstances of the case.¹⁹ In *Cairns* the High Court commented on sheriffs' perceived misunderstanding of the legislation,²⁰ while some fan groups and commentators have robustly expressed their concerns around 'over-policing' and unfair treatment.

1.20 Many of the debates over the merits of the legislation have focused on the extent to which certain behaviours at football can legitimately be deemed to be hate crimes, sectarian or otherwise and the degree of harm that may be attributed to them (for example, not only in terms of any immediate offence caused, but also potentially in terms of perpetuating wider social divisions and tension). Of course, the existence of 'sectarianism' in Scotland is itself a contentious one; some scholars argue that it is a 'thing of the past' (Bruce 2004) while others believe that it is a problem with far deeper roots in Scottish society (e.g. Devine (ed.) 2000; Kelly 2003).²¹ Clayton (2005) argues that 'sectarian' attitudes and behaviours are generally only identified at football matches, suggesting that the problem is limited to a form of 'football sectarianism' as opposed to a serious social problem. This perception is in keeping with Bruce *et al.*'s (2004) argument of 'tribalism' or what is also sometimes referred to as '90 minute sectarianism'. Devine meanwhile argues that more qualitative research is needed.²² But however it may be articulated the interplay between football and hate crime, particularly sectarianism, and the broader significance of that interplay, is crucial to any critical consideration of the Act. Recent survey research (Hinchliffe *et al.*, 2005) suggests that most people do see a strong link between football and sectarianism. However, there may be a degree of circularity in the relationship between public perceptions and legislative activity - in other words, in responding to apparent public concern about the link between football and sectarianism, the Act itself may have also served to amplify that perception. Debates have also centred on the fact that the Act targets football supporters specifically, as opposed to legislating uniformly. As will be explored further in chapter 3 of this report, many supporters and representatives from supporters' organisations expressed concern that football fans have been unfairly singled out.

Placing section 1 in its legal context

1.21 Section 1 is not unique. Some of its language appears in other statutes,²³ and much of what it deals with is familiar to criminal lawyers. Sport spectatorship

¹⁹ See fn 3-6 above and <http://www.dailyrecord.co.uk/news/scottish-news/student-convicted-under-controversial-anti-sectarian-3037633>, 19th January 2014

²⁰ *MacDonald v Cairns* [2013] HCJAC 73
<https://www.scotcourts.gov.uk/search-judgments/judgment?id=113686a6-8980-69d2-b500-ff0000d74aa7>

²¹ See the Advisory Group's report at <http://www.scotland.gov.uk/Resource/0044/00440386.pdf>

²² Tom Devine presentation at the Scottish Religious Cultures Network, 5 March 2014
<http://international.arts.gla.ac.uk/Main5thMarch2014.mp3>

²³ See for instance s 56 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, dealing with football banning orders, and s.74 of the Criminal Justice (Scotland) Act 2003, dealing with religious aggravation of an offence. See also s.96 of the Crime and Disorder Act 1998 ,

(especially football) has for many years attracted specific regulation by the criminal law throughout the UK and many parts of Europe. Both Scotland and England/Wales for example have specific laws to cover drinking in and around stadia,²⁴ and England/Wales has specific legislation on football ticket touting, pitch invasions and racist chanting at football.²⁵

1.22 Much of the behaviour of football supporters is governed by the ‘public order’ family of offences (such as the common law offences of breach of the peace or mobbing and rioting) to which section 1 belongs. Whether something is a risk to public order depends on the circumstances of where it happens, so that behaviour which might be disruptive but lawful²⁶ in everyday life can become unlawful in a mass football setting. Furthermore, one of the aims of these offences is to prevent disorder before it happens.²⁷ The offences therefore catch supporters who are attempting to do things which could cause a disturbance, not just those who already have. Hence, public order offences are not precisely worded and, because of that uncertainty, raise legitimate human rights concerns. We will consider later in this report the comments that were made by sheriffs and fiscals about section 1.

Breach of the peace

1.23 Section 1 is closest to the common law offence of breach of the peace and the similar statutory ‘section 38 offence’. Breach of the peace has been a notoriously wide and vague offence in the past, but was somewhat narrowed by *Smith v Donnelly*²⁸, which keeps it within the limits of the European Convention on Human Rights,²⁹ although some argue that it remains more vague than it should be (Ferguson 2013, p. 93). The *Smith* test requires the prosecution to show two things. First, that the accused’s conduct is ‘genuinely alarming and disturbing’. Second, the conduct must also in the surrounding circumstances³⁰ threaten ‘serious disturbance to the community’. If there is no evidence that people were in fact alarmed, then the conduct must be of the sort that would be alarming or seriously disturbing to any reasonable person in those particular circumstances.

dealing with racial aggravation of an offence; s.50A of the Criminal Law (Consolidation) (Scotland) Act 1995, dealing with racially-aggravated conduct and the Offences (Aggravation by Prejudice) (Scotland) Act 2009, dealing with aggravation of an offence by prejudice relating to disability, sexual orientation or transgender identity.

²⁴ In England under the Sporting Events (Control of Alcohol) Act 1985; in Scotland under s 18 of the Criminal Law (Consolidation) (Scotland) Act 1995. See also ss 19 and 20.

²⁵ In England, ticketing touting in public is dealt with by section 166 of the Criminal Justice and Public Order Act 1994. Pitch invasions are dealt with by s 4 of the Football Offences Act 1991 and “racialist” chanting is dealt with by s 3.

²⁶ *Jones v Carnegie* 2004 JC 136 <http://www.bailii.org/scot/cases/ScotHC/2004/25.html>

²⁷ *Wilson v Brown* 1982 Scots Law Times 361.

²⁸ *Smith v Donnelly* 2001 SLT 1007 <http://www.bailii.org/scot/cases/ScotHC/2001/121.html>

²⁹ The European Court of Human Rights decided that the *Smith* test complies with Article 7(1) of the ECHR, which requires that an offence must be clearly defined in law. See *Lucas v UK* [2003] ECHR 717 <http://www.bailii.org/eu/cases/ECHR/2003/717.html>

³⁰ *Dyer v Hutchison* 2006 JC 212 http://www.bailii.org/scot/cases/ScotHC/2006/HJCAC_45.html

1.24 What amounts to something that would seriously disturb the ‘community’ has been interpreted broadly. For example, shouting abuse at two paramedics in a private flat met the test, because a door was open onto the public street.³¹ An offence can even take place in private, but there would need to be evidence that there was a realistic risk of the conduct being discovered.³² That the behaviour is absorbed in a ‘cauldron of sound’ at a football game is not a defence either, the Appeal Court having asserted that ‘in the context of a noisy crowd the provocative nature of what was said and done takes on even greater significance.’³³

Threatening or abusive behaviour

1.25 The other offence most similar to section 1 is section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, dealing with threatening or abusive behaviour. A person will commit a section 38 offence if they behave in a threatening or abusive manner which would be likely to cause a reasonable person to suffer fear or alarm. They must have either intended this to cause fear or alarm, or have been reckless as to whether it would. This can be in public or private, and again, the potentially alarmed person does not have to be present. In a case where a man engaged in ‘vile, general and specific threats to well-known persons both dead and alive’³⁴ inside a locked police van, the court said that it ‘did not require to consider the likelihood of the remarks actually reaching’ the person who might be frightened or alarmed.³⁵ On appeal it was added that if a reasonable person would have suffered fear or alarm ‘it is no defence if the behaviour causes no fear or alarm to the individual complainer, who might be, for example, an intrepid Glasgow police officer.’³⁶

1.26 The High Court has commented that breach of the peace should not be limited to cases in which there was evidence of actual alarm or annoyance, because there is a ‘safeguard against any undue expansion of the law’ that the conduct must be genuinely alarming and disturbing to any reasonable person.³⁷ Likewise, the essence of the section 38 offence ‘is that the accused’s conduct is to be judged by an objective test in which the actual effect of the threatening or abusive behaviour on those who experience it is irrelevant’.³⁸ The test again is the effect on the reasonable person. Hence, the sweep of both offences is broad and it is not clear what forms of offensive behaviour, particularly singing, would or would not be caught by them.

³¹ *McIntyre v Nisbet* [2009] HCJAC 28 <http://www.scotcourts.gov.uk/opinions/2009HCJAC28.html>

³² *Jones v Carnegie* 2004 JC 136 <http://www.bailii.org/scot/cases/ScotHC/2004/25.html>

³³ *Dyer v Hutchison* 2006 JC 212 http://www.bailii.org/scot/cases/ScotHC/2006/HCJAC_45.html

³⁴ Frank Crowe “The test for causing alarm” 59(10) *Journal of the Law Society of Scotland* 28 <http://www.journalonline.co.uk/Magazine/59-10/1014579.aspx>

³⁵ *Rooney v Brown* 2013 HCJAC 57 <http://www.bailii.org/scot/cases/ScotHC/2013/2013HCJAC57.html>

³⁶ *Paterson v Harvie* [2014] HCJAC 87 <http://www.bailii.org/scot/cases/ScotHC/2014/%5B2014%5DHCJAC87.html>

³⁷ *Jones v Carnegie* 2004 JC 136 <http://www.bailii.org/scot/cases/ScotHC/2004/25.html>

³⁸ *Paterson v Harvie* [2014] HCJAC 87 <http://www.bailii.org/scot/cases/ScotHC/2014/%5B2014%5DHCJAC87.html>

1.27 It can be seen therefore that the margins of the pre-existing law that dealt with the sorts of football offences tackled by section 1 are themselves indistinct. They are capable of being extended to cover many situations where potential victims of public disorder need not necessarily be present.

Section 1's relationship with existing offences

1.28 Section 1 has therefore been introduced into an area of law which is already so broad that it is difficult to identify what changes the section actually makes (other than more clearly labelling the conduct it deals with). Criminal law academic Professor Pamela Ferguson has said, regarding breach of the peace, that '[w]hether any particular behaviour would amount to breach of the peace has always been hard to predict' (2013, pp. 132-137). Most of the ways in which a section 1 football offence can be committed are similar to those captured by breach of the peace or section 38, so it is useful to consider section 1 in the light of how legal commentators and the appeal courts have looked at these other offences.

1.29 The 'stirring up hatred' element of section 1, however, is novel. It takes the form of an incitement to disorder offence and the behaviour itself need not be alarming or disturbing. Section 1 here differs from most incitement offences by not specifying the need to prove a specific intention to commit the crime. The Scots common law offence of incitement to commit a crime requires evidence of 'a serious, earnest and pointed attempt by the accused to encourage and instruct a crime': it is important under the common law that the person seriously intended the crime to happen.³⁹ Likewise, the equivalent English law makes clear that it is not enough if the offence that resulted was merely a foreseeable consequence.⁴⁰ There have been no appeal cases to clarify the interpretation of 'stirring up' hatred in section 1. One sheriff noted that there have been very few prosecutions on this point to date and we have been unable to locate any reported judgments on the matter. But it is an important point and one which could be the subject of an appeal in the future.

Summary of the legal context

1.30 The criticisms made of section 1 are therefore familiar to critics of public order offences. Other similar offences such as breach of the peace and section 38 are also broadly drawn and broadly interpreted, and have raised similar concerns about civil liberties among legal commentators. These concerns include, for instance, the vagueness of concepts such as the 'reasonable person' or 'public disorder' when used in circumstances where behaviour may be categorised of having amounted to a *risk* of disorder yet did not in fact produce it. There is a long history in Scots and English law of civil liberties challenges to public order offences, some of which have been appealed, sometimes successfully, as far as the European Court of Human Rights. What is clearly new about section 1 is that it targets and labels behaviour related to football and provides for the courts to take

³⁹ *Baxter v HMA* 1998 JC 219.

⁴⁰ English law abolished its common law offence of inciting the commission of another offence but does have an offence of "intentionally encouraging or assisting an offence". However, this requires proof that the person intended this to happen or believed it would. The Serious Crime Act 2007, s 59 abolished incitement to commit an offence; sections 44-46 contain the new offences.

account of that in sentencing decisions. It may also have extended Scots criminal law, certainly at least as regards the offence of stirring up hatred.

The wider objectives

1.31 During the progress of the bill through Parliament the Scottish Government formally committed to evaluating the implementation and impact of the Act. This evaluation is therefore a statutory requirement in accordance with section 11 of the legislation and had two main formal objectives:

- 1) to undertake a process evaluation to examine the implementation of the legislation, including the practices and mechanisms put in place to support its operation. The process evaluation should also explore whether there are any barriers to successful implementation of the Act
- 2) to undertake an outcome evaluation to examine the impact the legislation has had on attitudes and behaviour of football supporters (and by extension to assess the impact of the Act on offending).

1.32 A key aim of the qualitative strand of the work was to assess the implementation of the legislation and to identify factors that may be impeding its 'effectiveness', as well as how it was experienced by key stakeholders – supporters, police, sheriffs and others. The qualitative research also complemented the survey of football supporters by addressing the following specific sub-objectives:

- to evaluate whether the atmosphere and behaviour at and around football matches has improved since the introduction of the Act;
- to examine supporters' perception of the legislation, in terms of their understanding of its content and their acceptance of its objectives;
- to examine whether supporters view the legislation as being implemented in a way that is clear, fair and consistent.

1.33 The survey of football supporters carried out in August and September 2013 was followed by a second survey at the end of the 2013-14 season. In combination, these allowed an engagement with the following specific issues:

- the prevalence of certain types of potentially offensive behaviour at football games;
- the prevalence of potentially offensive behaviour in 2012-13 and 2013/14 compared to previous football seasons;
- opinions on what type of behaviour at football is offensive;
- how authorities are dealing with potentially offensive behaviour at football compared to previous seasons;
- how easy or difficult it is for people to agree on what constitutes offensive behaviour at football;

- levels of awareness of laws related to offensive behaviour at football enacted in spring 2012, amongst football supporters.

1.34 Finally, in addition to the survey the evaluation involved analyses of police arrest statistics and crime reports to examine the sorts of cases that are being targeted for prosecution and to help assess the impact of the Act.

2. Methods

2.1 As noted in the introduction, the evaluation had three main elements: survey research with Scottish football supporters; qualitative interviews with key stakeholders; and secondary analysis of existing data sources. Each of these elements is described in more detail below.

Surveys of Scottish football supporters

2.2 Two online surveys of supporters of Scottish football clubs were conducted as part of the study. The first survey was 'live' between 20 August and 20 September 2013 and the second between 22 July and 5 August 2014.

Sampling strategy

2.3 The strategy for sampling supporters of Scottish football clubs relied on the assistance of Supporters Direct Scotland (SDS). SDS has created a network of Scottish football supporters who wish to debate issues related to Scottish football, via its 'Scottish Fans' forums and social media streams. At the outset of both surveys, every supporter in the SDS network received an emailed invitation to take part in the survey by clicking on a hyperlink.

2.4 At the time of the first survey launch, the SDS network consisted of 4,875 supporters. At the time of the second survey launch, the SDS network consisted of approximately 9,000 supporters⁴¹.

2.5 The use of the SDS network yielded a number of advantages:

- SDS encourages supporters of Scottish football clubs who play at all levels to sign up to its network. This meant that the survey invitation email was sent to supporters of all the 42 SPFL clubs (and responses were subsequently received from supporters of all 42 clubs).
- The SDS network included both season ticket holders and non-season ticket holders, giving access to a wider range of perspectives than would have been possible through club records (had these been available to the research team).

Limitations of the methods

2.6 Given the resources available, an online survey was considered the most appropriate method of data collection. A number of other surveys of football supporters have been conducted using similar approaches, including the Scottish National Football Survey.^{42 43}

⁴¹ The substantial increase in the size of the SDS network between these two surveys was due to the SDS receiving, and adding to its contacts database, a large number of additional supporters contact details. These details were voluntarily provided by respondents to the second National Fan Survey.

⁴² http://www.scottishfa.co.uk/scottish_football.cfm?page=3689

⁴³ <http://www.scottishfans.org/survey/>

2.7 When surveying a specific section of the population, such as supporters of Scottish football clubs, it is difficult to create a sampling frame from which to select a statistically representative sample of that population. For example, there are no centrally-collected administrative datasets listing supporters of Scottish football clubs and it would be impractical to use the Post Office Address file (PAF) to screen for football supporters at randomly selected households.

2.8 The sampling and data collection methods used for both surveys were considered the best available, given resource and other constraints, and allowed for the collection of data from supporters of all 42 SPFL clubs, as described above.

2.9 However, it is important to note that these samples were not a random probability sample of Scottish football supporters in general, as only those who were signed up to the SDS database were sent the survey link. Indeed, some supporters received the link from somewhere other than SDS, meaning that not all survey respondents will have been SDS network members.

2.10 The views of SDS members (and non-members who were forwarded the link to the survey) *may* be considered a reasonable proxy for those of Scottish football supporters in general, although the characteristics of SDS subscribers are likely to be distinctive in a number of important respects. For example, those signed up to SDS will necessarily have access to the internet and are likely to have a reasonable degree of ICT literacy.⁴⁴ Because of the broader character and patterning of internet access and use, it is likely that the profile of SDS subscribers may be younger and slightly more affluent than that of Scottish football supporters as a whole. It is also likely that SDS subscribers will have a greater interest in following and engaging in debate around issues affecting football clubs and football supporters (given the site's establishment of a 'fans forum' and use of social media to keep subscribers up to date with developments in the game). These characteristics are also likely to apply to non-SDS members who were forwarded the survey link by other means. Conversely, some highly-engaged supporters deliberately distance themselves from the SDS network, seeing (rightly or wrongly) its part-funding by Scottish Government as compromising its independence. In these cases the evaluation has drawn on more qualitative approaches to capture the perspectives of these groups.

2.11 When conducting analysis based on comparing survey responses from supporters of different clubs, we do not claim that the views of those surveyed represent the views of the entirety of the fan bases of those clubs. However, we feel that differences and similarities in views between the supporters of certain clubs is worth exploring, particularly where a reasonably high number of supporters of a club responded to the survey.

2.12 Despite these caveats, the sampling strategy used has resulted in survey responses being received from supporters of all 42 SPFL clubs and an almost even split of season ticket holders and non-season ticket holders, in both surveys. As

⁴⁴ Figures from the Scottish Government indicate that in 2011, 75.5% of adults living in Scotland used the internet for personal use.

such, and while acknowledging its limitations, it provides a workable basis for hypothesising about the views and experiences of Scottish football fans in general.

Data analysis techniques

2.13 Simple frequency tables have been used to show the prevalence of supporters that have witnessed particular behaviours, had particular experiences and hold certain opinions. Crosstabulation has been used to explore whether witnessing these behaviours, having these experiences and holding these opinions has an association with belonging to certain social and football related demographic groups.

2.14 The analysis in this report is based on the answers of participants who completed the survey in its entirety. There were 1,945 such responses to the first survey and 2,185 responses to the second survey. Not all participants were asked every question because participants were routed on the basis of their answers to certain questions. 'Don't know' responses to particular questions are excluded from the results referred to in this report. Although it is inappropriate to provide response rates, as it is impossible to say how many people had access to the survey, the size of the responses suggest a high level of interest and engagement.

Sample characteristics

2.15 The vast majority of those who completed both surveys were male (93% – 2014 survey), gave their ethnicity as white Scottish (89%) and were born in Scotland (91%). These figures are in line with other surveys of Scottish football supporters (for example, 95% of participants in the Scottish FA's 2012-13 National Football Survey were male)⁴⁵. It is doubtless the case that women, those born outwith Scotland and supporters from minority ethnic backgrounds are under-represented. There was greater diversity within the sample in terms of age, as illustrated in Table 2.1.

Table 2.1	Age of survey participants	2014
Age		
		%
Up to 29		17 (-2)
30-49		43 (-)
50-64		33 (+1)
65 +		7 (-)
<i>Base</i>		2185

N.B. Figures in brackets show percentage point change from 2013 survey

N.B. Twenty two under 16 year olds participated in the survey.

N.B. Figures do not always add up to 100% because of rounding

⁴⁵ <http://www.scottishfa.co.uk/resources/documents/ScottishFA/Survey/survey.pdf.pdf>

2.16 The Act is particularly concerned with behaviour that is ‘likely’ to cause public disorder by expressing hatred based on religion and as such the religious background of survey participants is of interest. The religious background of participants (Table 2.2) appears to be broadly in line with that of the Scottish population as a whole: in the Scottish Census of 2011, 37% of people described themselves as having no religion, 32% as belonging to the Church of Scotland, 16% as being Roman Catholic, six per cent as belonging to another type of Christian religion and three per cent as belonging to another religion, while seven per cent did not give a response to the census religion question⁴⁶.

Table 2.2 Religion of survey participants		2014
Religion		
		%
None		49 (-)
Church of Scotland		26 (-3)
Roman Catholic		16 (+2)
Other Christian		4 (-)
Other religion		1 (-)
Prefer not to say		3 (-)
<i>Base</i>		2185

N.B. Figures in brackets show percentage point change from 2013

2.17 Although survey responses were received from all 42 SPFL clubs, as expected, those from Scotland’s two largest cities, Glasgow and Edinburgh, comprised four of the five most-represented clubs. However, distribution across these clubs was not necessarily in line with the size of their respective fan bases. In particular, it is notable that supporters of Hearts were almost as numerous in the achieved sample as those of Rangers, while Celtic supporters were considerably more numerous than Rangers supporters. Of those clubs where more than 100 supporters responded to the survey, six out of the seven played in the Scottish Premiership during the 2013/14 season. Somewhat unexpectedly, St Mirren was the fifth best represented club in the 2014 survey, showing a substantial increase on the 2013 survey. The reason for this increase is not clear.

Table 2.3 Club supported 2014	
Club supported	
	%
Celtic	19 (+3)
Rangers	11 (+2)
Hearts	11 (-4)
Hibernian	9 (+3)

⁴⁶ <http://www.scotlandscensus.gov.uk/en/censusresults/bulletinr2.html>

Table 2.3 Club supported 2014	
St Mirren	9 (+5)
Aberdeen	6 (-1)
Motherwell	5 (+2)
Other teams	31 (-9)
Base	2185

N.B. Individual clubs listed where responses received from over 100 club supporters

N.B. The names of the four leagues which form the SPFL changed at the beginning of the 2013-14 season. As this report focuses on supporters' experiences of attending matches played in the 2012-13 season, the names of the divisions as they were known in the 2012-13 season are referred to in this report.

N.B. Figures in brackets show percentage point change from 2013 survey

2.18 There was a fairly even split between those who were season ticket holders for all or part of the 2013-14 season (60%) and those who were not (40%). Of those who were season ticket holders, 67% had held a season ticket for over 10 years. There was variation in the number of home games attended by supporters, over half (53%) attending 16 or more games and over one-fifths (22%) having attended five or less home games. Unsurprisingly, attendance at away games was less frequent, with 60% of supporters attending five away games or less, and 11% attending 16 or more away games.

2.19 Other questions sought to identify different 'types' of supporters, including which people attended home games with, whether they usually sat in an area of the stadium reserved for families and how that area of the stadium compared to others in terms of noise level. In 2013-14, only a small minority of respondents (11%) watched home games from a section reserved for families. Forty-five per cent of supporters watched home games from a section they felt had about the same noise level as other parts of the stadium. The remaining supporters were split almost evenly between those who sat in quieter (27%) and louder (28%) parts of the stadium

2.20 Supporters were most likely to report attending home games with adult males (70% doing so), with one-fifth (20%) attending with adult females. 18% of supporters reported attending home games with males aged under 16 years old; only six per cent reported sometimes attending games with females in the same age group.

Qualitative research

2.21 The qualitative research focused on a number of inter-related questions:

- To what extent are fans and stakeholders aware of the provisions of the new Act, and to what extent do they understand and support these provisions?
- To what extent is the new Act working, both in terms of being supported by appropriate club and criminal justice practices, and in terms of the legislative provisions adding value in terms of securing appropriate convictions and restrictions?
- To what extent is the new Act perceived to be impacting on fan behaviour?

Sample coverage

2.22 The research involved an extensive series of in-depth interviews and focus groups (1-3 hours in length) with key stakeholders involved in the policing or conduct of Scottish football, as well as with fan groups themselves, and with journalists responsible for providing coverage of football and football-related issues. Key stakeholders were – in part – identified through early consultation with the Scottish Government, Supporters Direct Scotland, and Police Scotland.

2.23 In conducting focus groups with groups of fans we sought to elicit their understanding and their perceptions of the Act, but also to gauge their perceptions of change in behaviour and atmosphere since the introduction of the Act. In addition their perceptions of how the Act has been practically enforced at different grounds and fixtures was also a concern. Finally, in selecting focus groups we looked to supplement data being collected via the survey, in particular reaching fans who were considered under-represented on the SDS mailing list (in particular younger supporters, and supporters who might be self-styled ‘ultras’ or members of ‘singing sections’). In selecting fan groups to look at we developed a ‘measurement footprint’ to help guide our choices. This was partially informed by selecting key clubs and rivalries that were associated with past issues of disorder or offensiveness, while also ensuring that clubs in at least the top three flights of the Scottish leagues were represented.⁴⁷ We also used existing research on fan typologies (in particular Crabbe et. al, 2006) to inform our recruitment of participants to help ensure that we heard from the different types of fans. Finally, in addition to formal interviews and focus groups we also held one meeting with SPFL officials.

2.24 The following interviews and focus groups were undertaken:

Police Scotland

Interviews with seven members of FoCUS

Interviews with seven football intelligence officers (including Rangers and Celtic)

Interviews with four match commanders

Other criminal justice personnel

Interviews with three procurators fiscal

Interviews with eight Sheriffs (with follow-up communications with three of these Sheriffs)

Interview with a defence solicitor

Clubs and league officials

⁴⁷ In the event we talked to fans from teams in the first four flights of the Scottish leagues.

Interviews with three club security officers

Interview with one stand safety manager

Interview with one fan liaison officer

Fans and fan groups

Meetings with representatives of various supporter's organisations, and representatives from the campaigning group, Fans Against Criminalisation (FAC)⁴⁸

Focus group with two groups of Rangers fans

Focus group with two groups of Celtic fans

Focus groups with four other fan groups (three single-team affiliated, one mixed)

Journalists

The research aimed to interview a number of key journalists, both sports journalists, but also those home affairs journalists who had covered the issue from the perspective of sectarianism. Eleven journalists in total were approached, six of whom replied and expressed some interest. However, ultimately, no formal interviews were conducted.

Licensed premises and match day observations

2.25 In addition to formal interviews and focus groups a more informal set of interviews with bar and pub staff was undertaken at two locations in Glasgow, covering fourteen pubs in total. The intention was to gauge staff perceptions on changes in fan behaviour in and around the premises, as well as to gauge their own understanding of the Act, and the policies they had in the premises for dealing with potentially offensive behaviour. These interviews were complemented with a limited exercise in match day observations, with two fieldworkers attending matches at these two locations, observing atmosphere and behaviour on the way to stadia, in pubs and bars either side of the fixture, and in the stadia itself during the match. This exercise was too limited to provide data on changes in match day behaviour in and of itself, but was intended to help inform and triangulate data collected from other sources.

⁴⁸ Our meeting with representatives from FAC was not used to formally collect evidence, but the representatives gave us a broad overview of their experience of the Act and indicated the kind of evidence which they had collated.

Limitations of the qualitative research

2.26 Though ultimately the research achieved a high level of fan input and representation, there were a variety of access issues in relation to the qualitative element of the research as a whole:

- Some fan groups were suspicious of the evaluation because it had been commissioned by the Scottish Government, although over time we did make inroads with the majority of these groups.
- Recruiting fans more generally for focus groups, particularly fans who were not followers of Celtic and Rangers, proved problematic and time consuming. The principal reason for this did not appear to be any principled reluctance, but rather simply that the Act was less of a pressing concern for other fans.
- Likewise, although interviews were conducted with all the Football Liaison Prosecutors and a number of sheriffs, others declined to come forward - again, less because of any principled reluctance to be involved, and more simply because they had not dealt with any OBFTC charges.
- Though we accessed a reasonable number of fans in the 18-21 age range through focus groups, we did not attempt to systematically access individuals under the age of 18. We cannot therefore assess the extent to which fans under this age may have a distinct view, or a unique set of experiences, when compared to the slightly older fans accessed in our focus groups. This relates to a wider ambiguity through this research in relation to what age categories were being referred to when respondent's talked about 'young supporters.' In many instances it appeared that individuals in the 'late-teens' to 'early twenties' age-bracket were being alluded to, though in some instances cases were discussed which involved individuals under the age of 16.
- The most problematic group to access was journalists, none of whom ultimately participated in the research. This may in part be because after the introduction of the Act, and in the absence of any Rangers-Celtic fixtures, that the issues involved were no longer of immediate interest. Nevertheless, given the grievances that many fans and indeed officials had with journalistic representations of fans and fan behaviour (and in their view, frequent distortions and exaggerations), and given that some journalists got directly involved in submitting evidence to Parliament in the run-up to the Act, this reticence is regrettable.

Administrative data

2.27 In addition to the main survey and qualitative fieldwork we also examined secondary data sources to gain a perspective on the impact of the Act in terms of trends in recorded incidents of crime and charges for relevant offences categories. Of equal importance, the secondary data allowed us to more systematically scrutinise how the Act was being enforced in terms of who was arrested, for what, where, and on what charge, as well as subsequent court disposals and sentences. The main data published and unpublished sources for this work were as follows:

- Statistics published by the Scottish Government detailing trends and patterns in hate crime offences (notably s. 74 offences, i.e. offences aggravated by religious aggravation as defined by the Criminal Justice (Scotland) Act 2003) and in those charges made specifically under s. 1 of the Act. These publications were predominantly based on data provided the Crown Office and Procurator Fiscal Service.
- Access to, and re-analysis of, anonymized case data held by the Scottish Government, based on records by the Crown Office. This data covered both s. 1 and s. 74 charges.
- Published national statistics on recorded crime in Scotland.
- A re-analysis of charge data collected by the Football Banning Order Authority, a unit now located within FoCUS, though previously hosted by legacy Strathclyde police.
- 2.28 None of these data sources was comprehensive or indeed free from methodological weaknesses, though when combined with each other, and with other data sources collected as part of this evaluation, they provide a very useful additional source of evidence. The strengths and weaknesses of each data source are discussed during the course of the report.

The Evaluation and the Review

2.29 The Scottish Government's commitment to review the Act may include reference to material other than this evaluation. This evaluation is however intended to provide material that may contribute to that review alongside other evidence, perspectives or material that the Scottish Government may choose to draw on. With that in mind, it may be helpful to summarise briefly what the evaluation can, and cannot, tell us about the impact of s. 1 of the Act thus far:

- The timing of the evaluation, which took place relatively shortly after the introduction of the Act, has some bearing on what can be realistically concluded about the Act's reception and impact. There has been a limited amount of time for case law to fully explore and test the legal provisions contained in s. 1. The limited evaluation period also constrains the extent to which we can draw definitive conclusions about trends in football-related crime and disorder.
- The evaluation has been based on the best available data sources, but there are other potentially relevant data that we were not in a position to access. For instance, a recent decline in the s. 1 conviction rate raises questions that could not be resolved through this research. Whether this decline is due to a change in the characteristics of cases being prosecuted, or due to issues of insufficient evidence, or due to other factors associated with the legal arguments made in courts, remains unclear at this stage.
- In assessing the impact of the Act other work could also be done to understand emerging issues – for instance, the experience of people arrested under the Act (especially in relation to the precise circumstances of arrest)

and how the implementation of the Act interacts with evolving strategies for policing and stewarding football.

- A more strategic question that remains to be addressed is how changes to the policing and stewarding of football following the introduction of the Act relate to broader considerations of fandom and the commercial prerogatives of the Scottish game.

2.30 In summary, this evaluation was not intended or able to arrive at definitive conclusions as to the overall success or failure of s. 1 of the Act to date. What it can hopefully offer is robust evidence on patterns of implementation, perceptions on impact, and emerging issues and questions in relation to s.1 related practices and interpretation.

3. The legislation and its implementation in practice

3.1 This chapter examines the introduction, targeting and experience of the legislation, both through the eyes of officials but also through the experience and perceptions of football fans. As will become readily apparent through this chapter, the implementation of the Act cannot be discussed in isolation from how it is implemented and enforced.

Police and club officials: Awareness and training

3.2 The Act came into force in March 2012, and a notable feature of its introduction was that charges under the Act very quickly followed. This rapid uptake was unsurprising given the aforementioned investment in criminal justice ‘infrastructure’ in the previous twelve months.

3.3 This investment ensured that training and awareness-raising of wider agencies and stakeholders was far advanced by the time of the legislation’s enactment. Unsurprisingly, police and club security officials interviewed for this research had a reasonably confident grasp of the legislation and its implications, and many had taken opportunities to be briefed on the Act by police officers from FoCUS.

3.4 Though police officers expressed various degrees of support for the Act, and varying levels of appreciation for the initial operational activities of FoCUS, a substantial majority acknowledged that the operational implications of the Act had been effectively communicated both through various forms of briefing and direct training (often provided by FoCUS) and via email, web communications, and in particular via FoCUS’ e-learning package.

3.5 Although some police officers questioned whether section 1 of the Act added anything new to the powers available under prior legislation, other officers talked about the Act as providing a new simplicity and therefore a new *clarity* – particularly around sectarian behaviour and offensiveness – that had been previously lacking.

before there was ridiculous ambiguity because invariably a lot of things boil down to being a breach of the peace that's...is it a breach of the peace, is it not? It depends what way the wind was blowing etcetera etcetera, a million and one factors and interpretation and discretion on the part of the police, whereas the legislation has now fine-tuned things dramatically so that there's still degrees of ambiguity on occasion but in the main it's negated all of that (middle-ranking Police Officer).

3.6 Whereas under prior legislation the prejudice element of an offence was often only seen as *practically* enforceable as an offence when combined with the accused clearly posing some *direct* threat to order⁴⁹, under the new legislation

⁴⁹ It should be noted that under pre-existing legislation, namely s. 38, a conviction did not require the police to provide evidence that the appellant had actually affected anyone. In the case of *Rooney v Brown* it was determined that even the arresting police officers did not need to be

some officers felt that the very act of publicly expressing an offensive sentiment was in, *and of itself*, denounced as unambiguously wrong and unlawful.

Breach of the peace is breach of the peace what we were doing for the first time is we were criminalising sectarian behaviour, that in itself is a success for me...[....] you've actually turned them into outcasts, you've been far more explicit. (Senior Police Officer)

there is a clear line there... it's pretty straightforward...if you sing anything that's offensive and it's clearly of religious, sectarian background then you are going to get arrested' (Club security official)

3.7 It is this element which was viewed by many of our police respondents as distinguishing section 1 from both the section 38 offence and common law breach of the peace.

3.8 It was also thought that this new clarity made it easier for officers to write police reports that clearly linked the behaviour witnessed to the relevant legislation.

I know there has been a lot of critics out there about the legislation and stuff like that but I feel it's better for us, it's more...um...there in your face you can see exactly where everything fits and it all fits quite neatly into each subsection of the different categories under the offences, under the charges (middle ranking, Police Officer)

3.9 Progressing cases was also considered to be much simpler because there was no longer the perceived need to justify charges by demonstrating that remarks made within a stadium posed a real risk of provoking disorder, or linking the remarks to an identifiable individual who would testify to being offended. Moreover, some offensive words or gestures which were associated with celebrating or supporting terrorism or terrorist organisations, but which were difficult to prosecute under either breach of the peace or section 38, now clearly fell within the ambit of the new legislation.

we discussed some of the songs with the fiscal before the legislation came in um...and unfortunately due to the fact that it was in support of terrorist groups it was hard to fit it into that Section 38 or a breach of the peace um...but when the new legislation came in then that just...fitted in, it was perfect (middle ranking Police Officer)

affected: 'it did not matter that the officers were not themselves in a state of fear or alarm. The appellant's remarks were likely to cause a reasonable person to suffer fear or alarm' (<https://www.scotcourts.gov.uk/search-judgments/judgment?id=6da6a1a6-8980-69d2-b500-ff0000d74aa7>). However, for a variety of pragmatic considerations (see Hamilton-Smith and McArdle 2013 for a fuller discussion), pre-Act policing of such behaviour in stadia tended to focus on cases where either a clear threat of disorder could be evidenced, or where the offender was attempting to exhort others around them to join in the offence (i.e. they were acting in the capacity of a ring-leader).

3.10 However, both fans and police officers in particular detected varying levels of ability among frontline officers' skills in *applying* the legislation, and in having a nuanced understanding of sectarian issues. Although FoCUS officers were present at most high risk football matches in the year following the introduction of the legislation, and indeed this intensity of enforcement activity was widely noted by respondents, some respondents questioned whether the same degree of attention and expertise was being paid to offensive behaviour occurring at lower-risk matches and outwith the stadia.

Whilst there's been a push to challenge it in the football stadia, there's been nothing in the environs where in actual fact if I was in the underground coming here, or in a bus going to Celtic park, or in any other crowd and that was ongoing that would be much more terrifying for me. If I come (into the ground) and I can hear someone singing a song way over there, to be honest with you it doesn't even affect me (Club security official)

3.11 A frequent fan complaint was that inexperienced police officers were also making inconsistent and/or erroneous judgements on what was, and was not, offensive under the legislation, acting in effect as the stand-in for the 'reasonable person'. Although the legislation was seen by many to provide a clear message that sectarian offensiveness was wrong, what the legislation did not do was clearly specify when behaviour crossed a threshold to become offensive. Some fans had raised concerns about the legislation to their MSPs and had been told that it was for the police to make that determination; conversely, some police interviewees were of the view that this task was one for politicians and not for them. In fact, as a more experienced officer was quick to note, it is for the courts to make this determination and to interpret what would be offensive to a 'reasonable person'. Nevertheless, this did not remove the difficulty for frontline officers in quickly deciding whether an act or speech within the context of a football match was likely to be interpreted as such by a court:

It's really quite challenging because you have to make a judgement but you won't know for months down the line and it might be the court says no actually...that doesn't fit, it's not offensive, or it wasn't likely to incite public disorder etcetera etcetera. But the good thing is, with ... the vast majority of the common behaviours now there have been convictions [...] so it's not just 'the police picking on people' now. You can't follow that argument anymore because the courts have actually decided (Football Intelligence Officer)

Fan awareness and perspectives

3.12 Given the rapid uptake in use of the Act, the relative intensity of police activity around the Act in the first year, and the controversy that some of this activity generated among some fan groups, it is unsurprising that basic fan awareness of the Act was high. In our survey, over four-fifths of supporters (83%) had heard of the Act (see Table 3.1). Awareness of the Act was greater in 2014 than in 2013, although some of this may be due to an increase in awareness caused by participation in the 2013 survey. Supporters of Rangers and Celtic had significantly greater awareness of the Act than supporters of other clubs, on average.

Table 3.1 Knowledge of OBFT Act by club supported (2014)			
Have you read or heard anything at all about the Offensive Behaviour at Football and Threatening Communications Act before now?	Yes %	No %	Bases
Club supported			
Celtic	94 (+5)	6 (-5)	423
Rangers	92 (+9)	8 (-9)	249
Other clubs	79 (+5)	21 (-5)	1513
All clubs	83 (+6)	17 (-6)	2185
<i>Base</i>			2185

N.B. Figures in brackets show percentage point change from 2013 survey

3.13 However, despite general awareness of the Act being high, many supporters did not feel that they had a deep level of awareness of what it involves (see Table 3.2). Just under a third of supporters who had heard of the Act (27%), said they knew a lot about it, with just over two-thirds (69%) saying they knew a little. Celtic and Rangers supporters felt that they had a greater in-depth knowledge of the Act than supporters of other clubs, on average. Celtic supporters, in particular, expressed deeper knowledge, with over half of those who had heard of the Act (52%) saying they knew a lot about it.

Table 3.2 Depth of knowledge of Act, by club supported (2014)				
How much would you say you know about the Act? (asked of those who report having heard of the Act)	A lot %	A little %	Nothing %	Bases
Club supported				
Celtic	52 (+17)	47 (-14)	1 (-3)	397
Rangers	34 (+7)	62 (-8)	4 (+1)	228
Other clubs	17 (+2)	77 (-4)	5(+1)	1196
All clubs	27 (+7)	69 (-7)	4 (-)	1821
<i>Base</i>				1821

N.B. Figures in brackets show percentage point change from 2013 survey

3.14 However, although general awareness of the Act was high, detailed awareness did appear to vary, and fans were often of the view that neither police nor club officials presented them with enough information to give them a sufficient

idea of what was, and was not, acceptable behaviour. Fans talked about pre-match announcements and match programme 'inserts' being so general, unspecific and 'automated' as to be unnoticeable, a view shared by some officials:

there's not been I would say any direct communication with fans in that respect, there's just been a general 'disclaimer'... for want of a word (Football Intelligence Officer)

3.15 However, there was evidence of good practice at some clubs, with one respondent from a recently promoted team referring to how good the club was in providing the fans with tailored information in a booklet about their new rivals, and how being drawn into certain types of 'banter' with them could risk sanction (Fan Focus group 7).

3.16 More general fan complaints that the police failed to communicate with them, and in particular that FoCUS failed to reach out to fans and that it simply launched into a punitive stage of enforcement, were not borne out by interviews with some other police officers and club officials who noted that FoCUS had in fact offered to meet fan groups to explain the legislation and their policing tactics:

Now, to be fair to FoCUS and other senior officers they have spoken with groups that are willing to listen to them. They've explained their filming policy, they've explained their destruction of films policy, they have... gave them an insight into what they are required to do in terms of the legislation, what they should sing, what they shouldn't sing to. (Club security official)

In the early days of FoCUS there was an education phase, it wasn't just instance criminalisation, but very few people paid attention. A couple of games there was no enforcement, people were just warned that with the new legislation they would be charged. But people didn't take it on board. (middle ranking Police Officer)

3.17 Some fans, similarly to many officials, questioned the practical value of the Act in terms of adding anything – in technical terms – to pre-existing legislation. Nevertheless, they appreciated its symbolic significance:

is it necessary given the other criminal offences that can be committed? And strictly, it's probably not, you could probably sanction that behaviour before. But now it's explicit and the numbers are going to add up. And it's going to become very visible who the perpetrators are, and what it is that's happening. Because ... although it's quite broad, it pins it down to...more than breach of the peace. – (Fan Focus Group 4)

3.18 Regardless of the quality of communication, our survey shows that a large majority of supporters view it as offensive to sing songs about people's religious backgrounds or beliefs, with around 85% of all fans agreeing in both survey sweeps. Even more people, 90% in 2014, agree that songs celebrating loss of life are offensive, though fewer think that political gestures are offensive (60%) 82% of fans find it offensive when supporters sing songs in support of terrorist organisations.

3.19 Supporters' views about more general behaviour at football matches were varied and nuanced but also largely stable between 2013 and 2014, where the same question was asked in both years (see Table 3.3). For example, in 2014, a small majority of supporters (55%) reported sometimes being offended by things they hear at football matches, while half of supporters agreed with the view that 'people go to football matches to let off steam and what they say should not be taken seriously'.

Table 3.3 Agreement with statements on behaviour at football (2014)

Whether agree with statement	Strongl y agree %	Slightly agree %	Neither agree, nor disagree %	Slightly disagree %	Strongly disagree %	<i>Bases</i>
Statement about behaviour at football						
'Sometimes I'm offended by things I hear other supporters shouting, chanting or singing at football matches'	19 (+2)	36 (-)	15 (-)	11 (-1)	20 (-)	2175
'People go to football matches to let off steam – what they say should not be taken seriously'	12 (-1)	38 (+3)	12 (-4)	19 (-)	19 (+1)	2169
'Sometimes I worry about the effect of other supporters' behaviour (or language) on people I go to football matches with'	10 (-)	26 (+1)	24 (-)	14 (-1)	26 (-)	2158
'It is offensive to sing, chant or shout things about people's religious background or beliefs at football matches'	69 (-1)	16 (+1)	7 (-1)	4 (+1)	4 (-)	2174
"I find it offensive when supporters sing songs in support of terrorist organisations"	73 (N/A)	9 (N/A)	9 (N/A)	3 (N/A)	6 (N/A)	2166
"I find it offensive when supporters sing songs which glorify or celebrate events involving the loss of life or serious injury"	80 (N/A)	10 (N/A)	5 (N/A)	2 (N/A)	3 (N/A)	2166
"I find it offensive when supporters make political gestures at football matches"	40 (N/A)	20 (N/A)	17 (N/A)	8 (N/A)	15 (N/A)	2153

N.B. Figures in brackets show percentage point change from 2013 survey

3.20 Regardless of the quality of communication, our survey suggested that there was a clear degree of agreement across the wider fan group regarding the sorts of behaviour which could be viewed as offensive.

Table 3.4 Whether it is offensive to sing, chant or shout things about people's religious background by club supported (2014)						
'It is offensive to sing, chant or shout things about people's religious background or beliefs at football matches'	Strongly agree %	Slightly agree %	Neither agree, nor disagree %	Slightly disagree %	Strongly disagree %	Bases
Club supported						
Celtic	65 (-)	17 (-)	8 (-)	5 (-)	5 (-)	420
Rangers	35 (-7)	25 (+4)	18 (-3)	9 (+3)	13 (+3)	249
Other clubs	76 (+2)	14 (+1)	5 (-1)	3 (+1)	2 (-2)	1505
All clubs	69 (-1)	16 (+1)	7 (-1)	4 (+1)	4 (-)	2174
<i>Base</i>						2174

N.B. Figures in brackets show percentage point change from 2013 survey

3.21 Rangers and Celtic fans demonstrated distinctive attitudes to whether certain types of songs or chants were offensive. Three new questions relating to attitudes about potentially offensive behaviour were asked on the 2014 survey (see the bottom three categories in Table 3.3). For instance, Rangers supporters were less likely to think that it was offensive to make comments about religious background (60%) compared to supporters of all clubs (85%). Conversely, Celtic supporters were much less likely to agree that it is offensive to sing songs in support of terrorist organisations (47%) compared to supporters of all clubs (82%) and make political gestures at football matches (28⁵⁰%), compared to supporters of all clubs (60%) – see tables 3.5 and 3.6).

Table 3.5 Whether it is offensive for supporters to sing songs in support of terrorist organisations (2014)						
"I find it offensive when supporters sing songs in support of terrorist organisations"	Strongly agree %	Slightly agree %	Neither agree, nor disagree %	Slightly disagree %	Strongly disagree %	Bases
Club supported						
Celtic	32	15	22	11	20	416
Rangers	76	9	8	2	5	249
Other clubs	84	8	5	1	2	1501
All clubs	73	9	9	3	6	2166
<i>Base</i>						2166

N.B. Figures in brackets show percentage point change from 2013 survey

⁵⁰ In table 3.6 this figure adds to 29% - the difference is due to rounding

Table 3.6 Whether it is offensive for supporters to make political gestures at football matches (2014)

"I find it offensive when supporters make political gestures at football matches"	Strongly agree %	Slightly agree %	Neither agree, nor disagree %	Slightly disagree %	Strongly disagree %	<i>Bases</i>
Club supported						
Celtic	18	11	12	13	47	415
Rangers	43	19	22	6	10	246
Other clubs	46	23	18	7	6	1492
All clubs	40	20	17	8	15	2153
<i>Base</i>						2153

N.B. Figures in brackets show percentage point change from 2013 survey

3.22 These tables evidence distinct patterns based on the club-allegiance of respondents. The songs that Rangers fans were most resistant to stop singing were considered (by police officials in the qualitative research) to be mostly offensive to other people's religious background or ethnicity (i.e. relating to 'Irish-Catholicism'), whereas the songs that Celtic fans were most resistant to stop singing were either viewed as 'political' and/or songs that were seen as directly celebratory of terrorist organisations or individuals who had been involved in terrorism.

3.23 Although some of the songs, chants and gestures made by Rangers and Celtic clearly fell within the category of offensive behaviour as defined by the Act, others were more problematic and more disputed. There were several clear areas of disagreement as to where the boundaries lay between acceptable and unacceptable behaviour. Although in our focus groups with Rangers and Celtic fans, most respondents disapproved of extreme songs and lyrics, there were also certain 'borderline' songs which some clubs and fans alike viewed as acceptable even though the police were seen to be branding them as 'sectarian'. The two main types of ambiguity focused on songs, chants or displays that made some mention of organisations or movements that, at some point, could have been associated with sectarian terrorist organisations, but which at other points in time could have been associated with either legitimately political or otherwise legitimate organisations. The second type of ambiguity (often intertwined with the first) was expressing a cultural identity in a form that could not be shown to directly communicate any hatred or opposition to another's culture, ethnicity or religion, but which could be construed as offensive simply because that cultural identity was viewed as provocative or 'oppositional' by others. For some this amounted to criminalising legitimate expressions of identity:

If you're no' doing anything that's...we keep going back to sectarian or racist or homophobic or anything like that...then there's nothing the matter with being different from the next supporter. There's nothing the matter with having different views and different songs and celebrating different cultures. These things should be celebrated. (Fan Focus group 1)

The legislation had been designed to tackle the extreme ends of criminality; whether it's sectarianism or racism or general abusive behaviour in all its forms. [...] The problem seems to be...the grey area in the middle. The legislation, by its design, allows the authorities to look at that grey area and draw conclusions in their view whether it's worthy of prosecution or not. And that to me has been a problem. (Club security official)

3.24 Because Parliament had decided not to provide a definitive list of offensive songs, gesture or words, clubs had shied away from trying to provide definitive guidance to their fans for fear of either advising as 'acceptable' behaviour which might be illegal, or alienating fans through definitively labelling as 'offensive' songs viewed by them as acceptable. However, although early in the evaluation some respondents claimed that fans were consequently genuinely uncertain as to whether a particular song, flag or set of words might, or might not, fall within the remit of the Act, in practice, there seems to have been little real confusion amongst fan respondents about what actions were likely to run the risk of prosecution. Fans did not in many instances agree that certain activities should fall within the purview of the legislation; but there seemed to be little doubt that singing the song in the first place would risk police attention and possible arrest.

3.25 Even where fans did view many of the traditional Rangers and Celtic supporters' songs as problematic now, there was still opposition to legislation which criminalised fans who sang them. In the view of a number of respondents, the songs had been on the wane anyway and efforts to replace and marginalise them pre-dated the legislation. There was also a commonly-expressed resentment voiced by Rangers and Celtic fans that the focus of the legislation was on Rangers and Celtic, when other fan groups were seen as being similarly offensive on occasion, without being similarly targeted (the behaviour of some England fans in the recent international fixture against Scotland being a case in point⁵¹). Another argument cited by some supporters is that they believe the legislation undermines freedom of speech; they do not believe that particular songs/chants/banners (which they believe are being targeted) are offensive or sectarian but are in fact a legitimate expression of particular identities. Certainly, the figures presented below do partially support the contention that the policing is heavily focused on these two teams⁵², and although it is not possible to determine whether this concentration of enforcement is proportionate to the level of 'offensiveness' across Scottish football, certainly focus groups with other clubs' fans elicited many examples of equivalently offensive songs and chants, but also a common contention that offensiveness outside of Rangers and Celtic fixtures was, regardless of the precise content, not of the same order of seriousness.

A lot of football songs are banter, are really funny ...[.....] Yes! [...]... And when they cut you to pieces, you get really annoyed, but you can't help but snigger.

⁵¹ During the game, England fans were heard to be singing abusive 'anti-IRA' chants within the stadia, though no reports were made to Police Scotland at the time. See 'Seven arrested after Scotland v England' Herald Scotland, Wednesday 19th November 2014.

⁵² Though a counter argument might be that the level of arrests at Ibrox and Parkhead are proportionate and merely reflect the much larger fan bases associated with these two clubs.

Because do you remember when XXX were playing XXX they all started singing, 'All the XXX are Gay' [Yeah] And you know, 'oh it is homophobic'. [.....]

the banter that can go back and forward between football fans, and you can hear them singing things, and you think "God I wish we had thought of that one!" [laughter] And it is brilliant and it is funny and it can be cutting. Sometimes it is pretty close to the edge, it is not PC. [.....]

What I would say with the Old Firm is there is nothing like that, it always comes back down to the same stuff about stupid Irish battles, and this and that and the next thing. And you think, 'get lost!' (Fan Focus group 5)

Legal understanding and interpretation of the Act

3.26 Sheriffs and fiscals were asked how they had first become aware of the legislation and what training if any they had received. Some had had formal training. Most interviewees focused on gaining personal experience and sharing knowledge, whether informally or through online judicial resource networks. Several of the sheriffs and fiscals were football supporters themselves; others had been taken to observe matches and the match policing and said that this had been particularly helpful. In Glasgow there is sharing of knowledge among sheriffs, who highlight aspects of legislative areas in which they have a particular expertise. One specialist in football banning orders⁵³ has prepared briefing papers that are now available on the judicial intranet.

3.27 Sheriffs and fiscals were also asked what behaviour they thought the 2012 Act was targeting, and what 'sort' of fan the legislature had had in mind. Again, views varied. The fiscals focused on the need to target large-scale disturbances and capturing ringleaders of violent disorder and offensive group singing and group chanting (not just 'sectarian' behaviours), and emphasised their role in developing a consistent prosecutorial practice across Scotland, particularly as regards the interpretation of songs and the requesting of football banning orders. Consistent interpretation of songs did not however mean that there would always be the same decision to prosecute. One fiscal said that they might decide to prosecute for instance where a bar had become known to the public as a 'no-go' area, but if the same songs were being sung in a 'bar in Oban' and were not disturbing the community, it might be sufficient in the first instance to have words with the landlord or customers. The prosecutorial decision would depend on the basis of what the harm was to people within that community.

3.28 Fiscals emphasised that they were encountering cases not just of 'sectarianism' or religious bigotry but also of other problems such as organised violence, homophobia and racism, although it was not generally felt that the latter two were widespread among fans, but rather concentrated in a minority.

⁵³ A football banning order is a 'preventative order' that may accompany a criminal sanction (such as a fine or a community sentence).

3.29 The fiscals were supportive of the legislation and its surrounding mechanisms, such as FoCUS: they said that it had enabled the fiscal service to work more effectively on a long-running problem and liaise more closely with the police. *‘Generally, working with the legislation and being aware of its criticisms I prefer it to the alternatives. It gives a stronger focus around behaviour at football’* (Fiscal 2). The hardest cases, they found, were not surprisingly the songs cases: *‘I think that the offensive singing in particular is one that has been problematic and challenging and probably will continue to be because there are different interpretations of some of the songs. Some of them are more obviously offensive than others, and I think we’ll need to keep testing those kinds of cases.’* (Fiscal 1) There was little enthusiasm however among fiscals and sheriffs for creating a list of banned songs, appealing as this would be. As one fiscal said, *‘the idea of providing a list is incredibly attractive but impossible. If you have illegal ones you’ll quickly come up with ones that are similar but which aren’t on the list.’* (Fiscal 3)

3.30 Sheriffs predominantly expressed some support for the Act, mixed with criticism. One sheriff strongly praised it: *‘I’m very supportive of what the Scottish government is trying to do about this’* (Sheriff 5); another said *‘I don’t have any problems with it coming in.’* (Sheriff 4) One was emphatically critical: *‘it is completely unnecessary, a ridiculous over-reaction and a wrong reaction which allowed the people who caused the trouble to avoid responsibility and turned the attention to the supporters. The Rangers players and their manager were the ones responsible ... it’s extraordinarily restrictive and far-reaching’* (Sheriff 7). Another felt it was an unnecessary response to pressure from UEFA, and an unwarranted restriction on the singing of traditional football songs (Sheriff 2). The others were critical of elements but supportive of its purpose: *‘I don’t really have a problem with the Act in principle ... it does have its good bits – in principle it is no bad thing to have legislation which tells people if you engage in incidents of overtly sectarian behaviour’* (Sheriff 6) and *‘it’s a valiant attempt to try and do something and I think you have got to be slow and steady and sensible about policing it.’* (Sheriff 1) Even its unpopularity with the press was cited by one sheriff, who was supportive of the Act, as having the valuable effect of *‘keeping the spotlight on the issue ... so many people don’t attend football matches and really have no idea what the behaviour is like, that I think it is quite helpful for it to come back into the public consciousness’* (Sheriff 5).

3.31 The two main criticisms sheriffs expressed were of the statutory wording and of a lack of discretion. The legislative language attracted a variety of disapproving observations by the sheriffs, not all of which can easily be reconciled. One said, for instance, that he considered most of section 1 to be clear but found the phrase ‘an expression of hatred’ difficult to interpret and argued that this made it difficult for fans to identify what songs should be excluded: he would prefer that the section was simply phrased as in section 1(2)(e), ‘behaviour that a reasonable person would be likely to consider offensive’. Defining ‘hatred’ was however what concerned him most: *‘most of the expressions are well explained’* but *‘that is a very difficult thing to prove. Because what you actually get are expressions of sentiment. It might be bad sentiment; it might be wrong sentiment; but what sort of evidence do we need to convert that sentiment into hatred?’* However, he felt that the number

of problematic cases being heard was so small that it was not a significant problem for the courts (Sheriff 2).

3.32 In contrast, another sheriff objected strongly to the phrase ‘behaviour that a reasonable person would be likely to consider offensive’ and said that *‘the way in which the Appeal Court has defined 1(2)(e) creates extraordinary restrictions on freedom of thought and expression.’* This concerned him because, he said, in practice this part of the section (‘behaviour that a reasonable person would be likely to consider offensive’) was being used more often to prosecute than the parts which had received more publicity (‘expressing hatred’, ‘stirring up hatred’ and ‘behaviour motivated by hatred’). He also criticised as too wide the Appeal Court’s interpretation of the requirement that conduct ‘would be likely to incite disorder’ (section 1(5)(b)): *‘(it seems) if you sing a song in Dingwall which would provoke a sectarian hothead in Glasgow were he to hear it, that will suffice’.* (Sheriff 7)

3.33 Another pair of contrasting views can be seen in two sheriffs’ discussion of the term ‘in relation to a football match’. One described it as *‘Draconian, potentially incredibly broad’* (Sheriff 6); another said that *‘it has to relate to “a football match”, not just “football”, so having an argument about football, about a particular team, isn’t covered. So the offence has to relate to a specific game, not the game in general or an opposing team in general. But (the s 51(3)) qualification does not exist in England – it is enough that it relates to a football match, and to me that is more sensible.’* (Sheriff 7) It is not that the sheriffs are in conflict. Rather, any legal term may need to be broad for one purpose and narrow for another, making the choice of language no easy matter.

3.34 The lack of discretion in implementing section 1 concerned two of the sheriffs. One supported having the legislation but said that it was essential that some discretion remained with police and fiscals: *‘what we’ve seen in other contexts is ... no discretion by police or fiscal, and then cases coming up to court which are just laughable, which would set the whole thing back. I’m not saying it’s happened yet, in the context of this legislation, but I think that’s where you have got to be very careful about it.’* (Sheriff 1)

3.35 The only case that has clarified the law in this area is *MacDonald v Cairns*⁵⁴, which illustrates the very wide breadth of section 1. The Appeal Court ruled that the sheriff had misdirected himself when he dismissed the case on the grounds that the respondent had not offended anyone present, and that no-one would have been incited to an act of disorder on the basis of what he was singing. The Appeal Court stated that *‘if the police officers were able to recognise the song and hear the words, other persons must also have been able to do so’*, but it emphasised that it was not necessary for anyone likely to be incited to disorder to be present. In its view it was not relevant to the question of whether there had been a contravention of section 1 that particular persons in a football ground could not actually hear the words being sung. *‘In other words the actual context within which the behaviour occurs is not determinative’* (para 12). The section created a new offence with, as

⁵⁴ *MacDonald v Cairns* [2013] HCJAJ 73 <https://www.scotcourts.gov.uk/search-judgments/judgment?id=113686a6-8980-69d2-b500-ff0000d74aa7>

the Appeal Court noted, '*an extremely long reach*'. Although sheriffs who regularly hear section 1 cases said that most involved pleas of guilty, so the evidence was not contested, 'borderline' offensive singing cases were considered challenging because of the question of how to interpret the impact of the songs. The guidance from *Cairns* will be helpful in that regard. Clearly, some traditional songs, when sung without any additional lyrics or verses, could be said to have no words that *directly* express hatred, but much depends on context. Football rivalry is often creative and can mutate rapidly. A message of bigotry may be conveyed by something as subtle as a brief gesture or a meaningful pause where words are implied but not sung. This presents a difficulty for law because communities' perceptions of what is banter and what is hatred may shift over time, and not all acts of antagonism are sufficiently offensive that they should be deemed to cross the *criminal* threshold. Deciding this will depend on several factors, ranging from the sheriff's general or local knowledge, to the current banned status of a particular song at a particular club. So, as one sheriff emphasised, if sheriffs are to apply section 1 consistently, they require not just guidance from prosecutors and appeal decisions, but a consistently high quality of evidence from witnesses.

Targeting of the Act

3.36 Outside those matches involving either Celtic or Rangers, most police respondents felt that the Act had made little difference to the categories of behaviour that were the focus of policing. Although the legislation was clearly being used, it was simply being applied to behaviour that previously would have been prosecuted as breach of the peace or section 38.

3.37 With regards to the new offences created by the Act, it was felt that they were being applied to behaviours specific to Rangers and Celtic fans - or at least specific to matches involving one of these clubs. A number of officers spoke of the potential for other fan groups to make offensive remarks or sing offensive songs but *only* on the occasion of playing one of these teams. This targeting of the legislation at Rangers and Celtic fans was very much supported by some, who felt the Act's enactment was almost exclusively a response to the behaviour of those teams' fans.

3.38 This view is supported by official figures which show that charges brought under the Act have primarily focused on behaviour associated with supporters of Rangers and Celtic. Over half of all OBFTC charges in 2012/13 and in 2013/14 were against supporters of these two clubs (57% in 12/13 down to 51% in 14/15). (Skivington and McKenna, 2014, p. 6) - though Celtic fans also represent a high proportion of 'affiliated'⁵⁵ victims as well, with 44% of all victims being affiliated to Celtic. Clearly, however this concentration of charges is partially accounted for by the much larger numbers of supporters following these clubs, and historical figures would suggest that the concentration of charges associated with these two clubs is not new to the Act. For instance under the Act, Celtic and Ibrox stadia accounted

⁵⁵ 'affiliation' does not imply that there was a specific identifiable victim, or that the victim was in some way affiliated to the club in a formal capacity, just that the offence was clearly aimed at Celtic supporters.

for 21% and 16% of charges respectively (ibid, p. 11). However, charges at football stadia before the Act in 2011-12 under section 74 charges (religious hate crime), whilst fewer number, were *proportionately* even more focussed on these two locations (both 22% of stadia charges – see Goulding and Cavanagh, 2012, p. 12).

3.39 The focus on behaviours most commonly associated with Rangers and Celtic is also reflected in the fact the majority of s. 1 charges primarily related to either speech or singing, though there was also a notable decline in the extent to which these behaviours underpinned s. 1 charges between 2012-13 and 2013-14. In 2012-13 offensive speech and singing were present in 137(51%) and 112 (42%) respectively⁵⁶, of the 268 charges made (Skivington and Mckenna, 2014, p. 8). In 2013-14 this had declined to 72 for speech (35%) and 75 for singing (37%) of the 203 charges made (OBFTC report p. 8). The majority of s. 1 charges also fell under those aspects of the legislation most synonymous with issues around tackling sectarianism, with 56% of charges in 2012-13, and 51% in 2013-14 clearly focussed on hate crimes relating either to religion⁵⁷ (40% & 30% respectively), or crimes relating to support for terrorist groups, or celebrating loss of life (17% & 28%) (Skivington and Mckenna, 2014, p. 7).

3.40 Consistent with perceptions about the impact of the Act, a number of police respondents were of the view that arrest figures on match days had not risen since its introduction, though some felt that more arrests were leading to formal charges. One senior officer, conversely, was of the view that under the Act initially, in particular with the additional police resources provided by FoCUS, levels of arrests had gone up, until the point where fans started to change their behaviour:

So to begin with they [FoCUS] helped us out, we were getting two or three arrests more than we would have done... singing came down (Senior Police Officer)

3.41 The fiscals also felt that the Crown and the police were liaising well under the new Act, and that as a result there were more successful prosecutions. However, a difficulty of judging the effectiveness of the legislation in terms of successful prosecutions is that there is no precursor legislation, for which published statistics are compiled, that we can use to readily compare with the subsequent performance of s. 1 charges. Precursor charges under breach of the peace and section 74 of the Criminal Justice (Scotland) Act 2003 (offences aggravated by religious prejudice) cover a much wider set of behaviours and contexts than the particular challenges of football-related offending. However, a tentative comparison *can* be made if we examine figures compiled by the Football Banning Order Authority (now located alongside FoCUS).

⁵⁶ There is some overlap between different these categories as a single charge could incorporate a number of different elements of offensiveness, e.g. a person could be charged both for singing an offensive song and making an offensive comment during the same incident.

⁵⁷ Though the majority of hate crimes relating to religion were presumably associated with abuses directed at Catholicism or Irish-Catholic identity, clearly some of this offending also relates to offensiveness targeted at other religions (e.g. Judaism, Islam etc.).

3.42 The figures detailed here are submitted by police divisions to the Football Banning Authority and relate to the main *charges* against individuals inside stadia, but also charges identified in wider police divisional areas that were assessed as being related to a football fixture (e.g. an incidence of disorder in a public street or in a pub between football supporters). Though rigorously collected and compiled, these figures are not directly comparable to official statistics in so far as they are *charges* (not just concluded cases or convictions), whilst offences are mostly coded using police offence categories (breach of the peace, police assault) rather than describing what final charges are made under which particular piece of legislation. The key exception to this is that all s. 1 charges made under the OBFTC Act are precisely noted. As well as s.1 offences, the figures cover breach of the peace, culpable and reckless conduct (typically flares or smoke bombs covered under s. 20 of the Criminal Law (Consolidation) (Scotland) Act 1995), or any other type of offence that was linked to a football match, including the various types of legislated hate crime⁵⁸. The value in these figures is that prior to 2013-14, the range of behaviours that may be viewed as ‘sectarian’ and which are now heavily targeted by s.1 of the Act, were coded as ‘sectarian’ or ‘racial’⁵⁹ by the Football Banning Authority. This gives us some insight into how effective the criminal justice system was at tackling sectarian offences at football both pre and immediately post the Act.

3.43 For the purposes of the evaluation we had a limited sub-set of data available to compare arrest figures in three, now historic, Scottish police force areas (Strathclyde, Central and Tayside) with more recent figures for the same ‘legacy’ areas since the introduction of the 2012 Act. Figures were used for three seasons prior to the problematic 2010-11 season and for approximately⁶⁰ one and half seasons since the introduction of the Act in March 2012.

3.44 The figures in Table 3.7 below should not be read as providing a directly comparable, portrait of how the police and the criminal justice system dealt with sectarian behaviour pre and post the Act. Both the legislative framework *and* the policing context are significantly different between these two time periods, so precise comparisons would be erroneous. Moreover, these figures only relate to three ‘legacy’ police force area. Nevertheless in ‘broad brush’ terms the figures in Table 3.7 are useful in tentatively indicating a number of patterns of interest:

⁵⁸ though these figures exclude more minor offences such as being ‘drunk and incapable’ or alcohol- related offences covered in the Criminal Law (Consolidation) (Scotland) Act 1995, or more ‘indirectly’ related offences such as domestic violence. The figures do include religious and racially aggravated offences which prior to the Act would have been prosecuted under Section 74 of the Criminal Justice (Scotland) Act 2003 for religious aggravation, whilst racial aggravations could be prosecuted under a variety of different legislative instruments, such as Section 96 of the Crime and Disorder Act 1998. Precursor legislation also covered offences aggravated by expression of hatred on the basis of sexual orientation, disability and transgender identity.

⁵⁹ Racial offences are included here, as before the Act some offences directed at a group or person’s Irish background or heritage may have been coded as ‘racial’, though in including this category it has to be acknowledged that a number of other racial charges non associated with sectarianism will have been counted.

⁶⁰ The post-Act figures can only be seen as approximate primarily because insufficient time has elapsed for all the charges made during this period to have reached some sort of conclusion in terms of judicial outcomes.

- The immediate post-Act period in these areas is associated with an overall increase in the number of charges brought against football supporters, though official figures show that the number of charges brought under s.1 has subsequently declined significantly (Skivington and Mckenna 2014)
- In spite of the initial increase in the number of charges, the proportion of all concluded cases resulting in a conviction remains unchanged.
- The 2012-13 figures in Table 3.7 do show a remarkably quick adoption of the legislation in these areas in terms of the proportion of charges brought under the new legislation in these first fifteen months rather than the older provisions (104 concluded cases or 61% of the total). In particular s.1 was used for the majority of 'sectarian' or racial charges within only 4 of the 36 successful convictions being secured under old powers.

Table 3.7 Football-related charges, convictions and banning orders in three areas, pre and post the Act		
Case progress and outcome	Football-related charges in Strathclyde, Tayside and Fife, September 2006 to May 2009 (33 months)	Football-related charges in Strathclyde, Tayside and Fife, March 2012 to May 2013 (15 months)
Cases committed to trial where an outcome is noted	222	171 (107 cases concluded under the s. 1 of OBFTC Act)
Cases resulting in a fine, conviction, procurator fiscal fine or admonished	172 (77%)	132 (77%)
Of which...number of convictions etc. that relate to a marked sectarian ¹ or racial charge	81	36 (equivalent to 79 charges over 33 months)
% marked sectarian or racial charges resulting in no conviction etc. ²	54%	26%
% of marked sectarian or racial convictions leading to a Football Banning Order	11%	55%

¹It is important to note that the marking of offences as 'sectarian' is a police practice which is not reflected in the actual wording of the Act (or under precursor legislation) under which one would instead be prosecuted for a religiously or racially aggravated offence, for other hate crimes, or for supporting terrorism or celebrating loss of life.

²Typically these case outcomes were marked either as 'no proceedings', 'not guilty' or 'not proven'

- However, whilst s. 1 is readily adopted, the actual *number* of charges brought for sectarian or racial charges (whether brought under new or old legislation) does not appear to increase in the immediate post- Act period in these three areas.

- Importantly, where charges *are* brought, the proportion of marked ‘sectarian’ and racial charges resulting in a successful conviction *increases* in the immediate post-Act period, with the proportion of such cases failing to lead to a conviction more than halving between the pre and post-Act period. Whether this reflects the greater ease with which the Act allows convictions to be secured, or is rather due to greater police and prosecutor awareness and resources being focused on match day offensiveness and disorder, or both, is at present unclear.
- Finally, where a successful conviction is secured for a ‘sectarian’ or racial charge, a much higher proportion of such cases successfully result in the imposition of a football banning order.

3.45 The figures for ‘sectarian’ and ‘racial’ offences need to be treated with a great deal of caution for two further reasons. First, clearly what behaviours and songs constitute a sectarian or racist offence is highly contentious and disputed. Second, cases historically have often not been marked as sectarian or racist even where the evidence demonstrates that such a marking would be appropriate (see Hamilton-Smith et. al., 2011). It is not yet clear whether charges brought since the introduction of the 2012 Act are subject to similar recording issues. Nevertheless some confidence in the indicative usefulness of these figures can be found in comparing these figures with published official data. Scottish Government figures for s. 1 of the Act in the twelve months between April 2012 and March 2013, indicate 25% of s. 1 charges nationally which were proceeded with resulted in no conviction (Scottish Government 2014a, p. 81). In comparison our data for these three areas between March 2012 and May 2013, albeit including cases which *are not* proceeded with, provides a figure of 26% of cases resulting in no conviction.

3.46 In spite of this apparent increase in successful prosecutions, there were also a number of concerns commonly raised by police and club respondents. These did not relate to the principles or content of the legislation, but to how it was being interpreted and enforced. Concerns focused on a number of inter-related issues, and mostly related to enforcement actions taken against Rangers and Celtic fans:

- It was claimed by some police and club respondents that because a significant proportion of quite moderate fans disagreed with attempts to criminalise certain borderline songs, large numbers of fans could still be found singing these. Consequently it was perceived by some police, fan and club respondents that charges were often brought quite arbitrarily against one or two random individuals within a much larger crowd, on the basis of them being most readily identifiable as singing the song (and thus being most likely to be subject to a successful prosecution). Fan and club respondents in particular felt that younger fans were disproportionately targeted because they lacked the ‘nous’ to hide their identity.
- The initial approach taken by some senior officers to charging and arresting individuals was seen as especially contentious. First, the approach to evidence gathering, in particular by FoCUS officers, was seen by some fans, as well as by a few police officers, as underhand, with officers recording crowd behaviour from a considerable distance with hand-held cameras. This

rendered officers comparatively invisible to those subject to this form of surveillance. Second, rather than confront and arrest individuals at games, a number of highly publicised arrests had been made, often many days later, and on occasion through morning arrests at individuals' homes or on a Friday (resulting in custody over the weekend).

- Even when they were clearly visible, fans and some police officers alike felt that this represented a 'disengaged' style of policing that missed the opportunity to positively influence fan behaviour, and to ward off misbehaviour, through more direct engagement (see the discussion below).
- In the view of some police, club and fan respondents the use of the legislation was too focused on some borderline – and highly disputed – songs rather than on the more obviously offensive songs and on more violent behaviour both within and outside the stadia. The exception was the use of flares, which was seen by police and club officials alike as a recent problem that deserved prioritisation.

3.47 These concerns were by no means shared by all respondents. For instance, some police officers were adamant that fans were not generally targeted at random, though this difference of view may reflect different practices at different stadia or at different fixtures. Complaints (predominantly from fans) about delays in arresting individuals also conflicted with well-established best practice of not 'diving into' the crowd to arrest individuals during a match (for risk of sparking disorder). However, in these instances some police respondents recognized that arresting individuals at the interval or at the end of the match was nevertheless preferable to a more delayed response.

3.48 Available data also does not entirely support the concerns of some respondents regarding a focus on more 'borderline' songs. Whilst there had been a small number of high profile cases, an examination of anonymised Crown Office case data showed very few s. 1 cases where an offence was proceeded with purely on the basis of some of these disputed songs; rather, most incidents involved *additional* actions or forms of offensiveness that were much less ambiguous. Conversely, Crown Office statistics do provide some support for the contention that young fans are being particularly affected by the legislation. Under the Act in 2012/13 35.8% ($n=96$) of accused individuals were 20 or under (for all types offence under s. 1) with a large majority ($n=197$ or over 74%) being under 30 (Goulding and Cavanagh, 2013, p. 9). By 2013-14 this had risen to 46% ($n=95$) of all accused being under 20, though it must be noted that this *proportionate* increase must be seen against a decline in charges overall, and in particular a decline in charges against older fans.⁶¹ (Skivington and Mckenna 2014, p. 4). In comparison if we look at the age profile of accused charged under section 74 offences in the same year, only 14% of accused are under 20 (Mckenna and Skivington 2014, p. 11).

⁶¹ Though a number of multiple charges against young fans at one fixture partly accounts for this *proportionate* increase.

3.49 However, again, other common elements of fan complaints from those who perceived the Act as ‘Draconian’ are not supported in official statistics. Crown Office statistics, notably, do not support accounts of the Act involving jail sentences being commonly imposed upon convicted fans. Only two such disposals were noted in 2012/13 under the Act, with a further two such disposals in 2013/14 (Skivington and McKenna 2014, p. 15). Data from the Football Banning Authority presents a similar picture, with only three custodial sentences associated with s. 1 charges in their 2013-14 year, of which one of these three charges related to religious offensiveness, the other two pertaining to violent conduct. The same data shows that out of 146 convictions in 2013-14 where a disposal is noted (including charges made under breach of the peace), only 7% (n=11) resulted in a custodial sentence, nearly all for acts of violence.

3.50 The latest published figures for 2013-14 reveal a decline in the success of charges progressed under the Act. By point of comparison, in 2013-14, in total there were 16,252 people proceeded against for breach of the peace, of which 16% (2,529 charges), resulted in a not guilty verdict or an equivalent disposal (e.g. not proven) (Scottish Government 2014a, table 2a, page 31). Under s. 1 of the Act in 2013-14 there were 154 people proceeded against in court, of which 74 charges (48% of the total) resulted in a not guilty verdict (ibid, p. 81). This represents an appreciable deterioration on 2012-13, when of the 91 people proceeded against for section 1, only 25 resulted in not guilty verdicts (27% of the total).

3.51 There are a number of competing explanations for this sudden decline in successful prosecutions:

- The Act, after initial clear cut cases, may now be attempting to address more difficult, or disputed cases, for instance charges where there is no identifiable victim. Such cases have risen markedly under s. 1 from 48% in 2012/13 to 58% of all charges in 2013/14 (Skivington and McKenna 2014, p. 14). When looking at the sub-set of charges relating to offensiveness on the basis of religion, only 33% of religious hate crime charges prior to the Act made under section 74 had no identifiable victim, whilst this has risen to 78% of similar charges made under s. 1 of the Act (COPFS data). This rises in turn to 85% of all such charges relating to behavior in stadia (Goulding and Cavanagh, 2012– p. 14).
- The Act has also been used to address more cases where the offensive behavior involves alleged support for terrorist organisations or a celebration of loss of life. These cases include some of the most legally contested cases and account for an increasing proportion of section 1 charges (17% in 2012/13 rising to 28% in 2013/14) (Skivington and McKenna 2014, p. 8).
- They may be issues more generally with managing football-related charges that is associated with these conviction figures rather than anything to specifically with the Act itself. For instance delays in getting cases to court may be leading to more cases being unresolved.

3.52 On this last point, whilst there are no published figures to help explore these issues, Football Banning Order Authority figures, again, provide some useful insight, as the cases contained on the Authority's database are updated on a daily basis using access to electronic court records. The evaluation was able to look at figures for the whole of Scotland for 2013-14 'football year' (i.e. tracking the football season, and running from approximately July to June). Again this database contains both s. 1, breach of the peace and other similar football-related offences. In this period there were 323 charges, of which 218 (67%) had been resolved (as of approximately the 1st March 2015 when we accessed the data). Of the resolved cases, 32% had resulted in no conviction (i.e. an outcome of 'not guilty', 'not proven' etc.), some way lower than the 48% reported in the published figures *for s. 1 cases only* for 2013/14 (Scottish Government 2014a, Annex E, p. 81). However, if unresolved cases in the Authority's database are included, 54% of all prosecutions had either failed or were unresolved in the 2013-14 'football year'. As a proportion of the unresolved (or 'pending') cases were considered likely by the Football Banning Authority to have actually been resolved in terms of the case being dropped but without the conclusive date being added to the electronic court record, this may account for the difference between the two 'no conviction' figures.

3.53 As shown in table 3.8, when we compare, exclusively, football-related breach of the peace and s. 1 offences, again using Authority data for the 2013-14 'football year', it becomes apparent that this level of performance, in terms of securing convictions, *is not* particular to the Act, but is in fact common to other football-related charges, with broadly similar levels of charges resulting in no conviction or being incomplete.

Table 3.8: Comparing case progress and disposal for football-related offences charged under s. 1 OBFTC and Breach of the Peace (source: Football Banning Authority, 2013-14)

s.1 OBFTC – disposals	No.	Percent ¹	Breach of the Peace (BOP)	No.	Percent
Conviction	73	48%	Conviction	49	45%
No conviction	36	24%	No Conviction	22	20%
Case pending	43	28%	Case pending	39	35%
Total	152		Total	110	
Average days elapsed from date of offence to disposal (or to 1st March 2015 if case pending)					
All cases²	274 days	(mean)		293 days	(median)
With conviction					
S. OBFTC	216 days	(mean)	BOP	196 days	(mean)
No conviction					
S. OBFTC	200 days	(mean)	BOP	190 days	(mean)

Notes:

¹These percentages relate to all cases, pending and completed, and therefore are not equivalent to an official 'conviction rate' which measures the percentage of *completed* cases resulting in a conviction.

²This estimate relates to all football-related charges (not just s. 1 and BOP charges) with a usable date record.

3.54 Table 3.8 also includes a sub-set of cases which were either clearly shown as incomplete (marked 'pending') or where the case had been completed and a trial date was available. This enabled us to roughly estimate the time elapsed between the date of offence and any subsequent case disposal. This entailed removing 55 cases where date information was missing. For the 268 remaining cases, we worked out the time elapsed (in days)⁶².

3.55 When we look at the time taken from offence date to sentencing, it becomes clear that cases under s. 1 are taking slightly longer than cases under breach of the peace to reach some form of conclusion, whilst cases under both types of offences are actually taking, on average, substantial lengths of time to conclude. Whilst, it is difficult to judge these timescales in terms of reasonableness, in the absence of published figures for similar types of offences in Scotland prior to the Act, even a very cautious examination of what published figures are available on trial lengths in

⁶² Where cases were unresolved the 1st March 2015 was used as the 'latest date' by which we estimated a time elapsed figure. Given that an unknown proportion of the 'pending' case will have been concluded, it is likely that the estimates for total time elapsed are exaggerated (the mean average time elapsed for such pending cases is 394 days, with s. 1 cases having a mean average of 451 days). Conversely, where cases are shown as concluded and only a date for the first court appearance is provided (the 'intermediate diet' appearance), the earlier date has been used as the conclusive date. Whilst, some of these cases may have been concluded at this earlier date (with a guilty plea and immediate sentence) in other instances it is clear that the final disposal date is missing, and in these instances the estimates for time elapsed are likely to *underestimate* the real time taken.

other jurisdictions would suggest that these cases are taking a comparatively long time⁶³.

3.56 Thus one possible explanation for the drop in the official 2013/14 conviction rate for charges brought under s.1 is that the figures might partially reflect issues with a backlog of cases. Whether these timescales relate to capacity issues with the police, the Crown Office, or the Court Service, or in fact are normal and to be expected for these types of charges, we are unable to say. Moreover, whether these timescales are likely to be meaningful in terms of impeding the effectiveness of the Act is difficult to assess based on current evidence. Whilst classical sentencing theory (Beccaria 1963) would assert that delays in sentencing might reduce the deterrent impact of a particular penalty, academic studies have failed to definitively establish this (e.g. Clark 1988).

3.57 What cannot be discounted is that slow case progress is likely to impact negatively on suspects, as punishment can often be viewed as starting from the point of arrest *not* from the point of sentence (Feely 1977)⁶⁴. As will become evident below, in this study lengthy case times added to some supporters' sense of unfairness, as charged supporters were perceived to be left with a potential conviction hanging over them for a long period. Moreover, many accused faced stringent bail conditions in the meantime. For instance, whilst in the 2013-14 Football Banning Authority dataset, some 57 convicted fans had football banning orders imposed on them post-conviction (38% of those convicted), 65 fans whose cases were either pending, or whose case ended up with 'no conviction', had bail conditions that included a football banning order or equivalent, or in some instances had conditions that significantly exceeded those typical to football banning orders. This included 40 (58%) of the 69 'no conviction' cases across all charge types. The imposition of such conditions had caused controversy in some s.1 cases⁶⁵.

The enforcement of the Act

3.58 To understand what the statistics tell us about the Act's use, the evaluation asked question of supporters and officials to gauge their experiences and perspectives on how the Act was being implemented. It should be remembered that the data in this section, as it relates to supporters, was taken from qualitative interviews and focus groups. As was discussed in the methods chapter, the focus groups were intended to supplement the survey, and whilst some of these involved fans who were supportive of the aims of the Act, others attracted fans who were opposed to all, or some aspects of the legislation. More generally, the focus groups

⁶³ ⁶³ For instance, statistics in England and Wales showed that in 2011 the mean time elapsed between the offence and case disposal for common assault and actual bodily harm was 127 days, with a median average of 94 days (Ministry of Justice 2012). This cannot be used to make a judgment about the efficiencies of Scottish processes, as the two criminal justice systems are very different, but regardless of this, the accused may reasonably be presumed to feel the effects of slow case progress in similar ways.

⁶⁴ Though we worked out case times from the data of offence rather than the date of arrest (due to the former date record being more complete) in the large majority of cases (circ. 70%) the arrest date was the same as the offence date.

⁶⁵ See 'Ten Rangers fans in court over alleged sectarian incident', BBC News, 9th December 2014. <http://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-30404056>

attracted fans who were – at the very least – interested in, and therefore to some extent critically engaged with, many of the issues raised by the Act.

3.59 The early stages of the Act's implementation was characterised by many supporters and officials alike as involving a somewhat 'intensive' policing approach, perhaps unsurprising given the level of political and media coverage in the year preceding its introduction:

Yeah, it just came in and it just came in like a runaway train (Football Intelligence Officer)

it's about a shock and awe, front page of the newspapers, and making sure that people are challenged (Club security official)

3.60 Though it was also acknowledged that much of the momentum in terms of police and criminal justice responses actually pre-dated the Act with the establishment of FoCUS and Football liaison prosecutors in the previous year:

FoCUS played that part at the time, there was a real political imperative, they were being pushed quite aggressively, in a positive sense I suppose, right across the country.' (Senior Police Officer)

3.61 Although supporters of different clubs offered varied accounts of experiences of policing and stewarding, there was a general consensus that security visibly increased at many of the clubs when the Act came into force, most notably at Celtic, Rangers, Aberdeen, and Hibs (UB & Student focus group). Interestingly, despite the fact that the majority of focus group participants perceived the Act to be targeting Celtic and Rangers supporters in particular, the experiences of different types of fans converged greatly. For example, at one of the Celtic focus groups much discussion centred on the levels of policing within Celtic Park at specific parts of the stadium.

One participant was surprised at how different her experience was from the rest of the group:

I've learned a lot because I've got a different experience from all of you, I travel independently, sit in an area of the ground that must be very, very boring, nothing ever happens! Nothing, no-one gets talked to, no-one gets lifted! (Fan Focus Group 2)

3.62 Similarly, fans of other clubs spoke of vastly different experiences depending on what part of the 'home' stadium they were located in. Members of a supporters group with predominantly young fans described high levels of surveillance:

Our section at XXXX .. regularly we have two police with cameras in the main stand looking on our section, we will have two police with cameras at the back of our section looking down, and we will have another police with camera on the other side of the stand next to the away fans, pointing back across to us, just so they don't miss any angle' (Fan Focus Group 4)

3.63 This was in stark contrast to the other participants who described rarely seeing much of a police presence in their stand and were never aware of being filmed during matches. Similar patterns emerged from other focus groups, including those constituted by supporters of teams other than Rangers and Celtic. Virtually all fans agreed that they were policed in a much more intensive manner when part of the away support.

it's the three different searches on the way into the ground, it's the getting off your bus and you've got police either side of you standing with video recorders filming every single person as they come off the bus.. in the game it's the same..
(Fan Focus Group 4)

3.64 This notion that particular 'types' of fans (as opposed to fans of particular clubs) are treated differently was supported by the police interviewed, who described a risk-based approach to policing within stadia:

That's just the way the police work you know, we target the hotspot areas and that's part of a football stadium as well is targeting the right areas (Football Intelligence Officer)

3.65 Unsurprisingly, it was perceived that the 'risk' groups involved young supporters, especially those who could be classed as 'ultras'. It was felt that some 'ultra' members gravitate towards risk (Police Scotland X2)

Interviewer - The singing section I mean have you...developed intelligence on them almost akin to being a risk group or...?

Police officer - Yeah I mean they are a risk group [...]There are different levels of risk and you've got...normal supporters, maybe a level one, you've got level two, level three, and maybe the high risk level four so everybody fits into that group at some point. You know they all fit into it but um...we can see that some of the singing sections are now merging with the higher risk. (Football Intelligence Officer)

3.66 This categorisation of young supporters and 'singing sections' as risk groups, whilst potentially appropriate on occasions, also seemed commonplace and potentially problematic, in particular when sections of supporters, who whilst maybe having the potential to be offensive, were clearly not associated with more violent disorder, came to draw on the scarce police assets and resources normally reserved for violent risk groups.

3.67 Some police representatives interviewed acknowledged that the early 'intensive' approach to policing the Act may have backfired somewhat, causing tension between police and groups of supporters (Football Intelligence Officers X 2, middle ranking Police Officer). One cause of tension was the reported increase in post-match arrests, often days or even weeks after the alleged offence. This was driven not by the Act *per se*, but by the increased use of cameras to provide evidence of offensive behaviours. Although it appeared that some fan groups may have been exaggerating the prevalence of these 'knock at the door' arrests to

strengthen their arguments against the legislation, the use of these tactics were nevertheless frequently raised by fans in focus groups as an illustration of the 'Draconian' enforcement of the Act (Fan Focus Groups 1, 2, 3, 4 & 7).

3.68 Another source of tension was that individuals arrested at games were perceived to be chosen somewhat arbitrarily. A common theme from the supporters' focus groups was the issue of hundreds or thousands of supporters singing the same song yet police arresting only a small number of people. Of course, police representatives spoke of the impracticality of arresting large numbers of people, and as noted earlier the supposed target of the Act is those who would be considered 'ringleaders'. However, most supporters felt that the police and stewards did not seem to be targeting 'ringleaders' and in fact were pursuing those who were easy to 'pin down' on camera.

*it seems to be a case of well instead of actually policing the situation we are just going to let them do what they want and then we are going to drag a couple of them out of their beds at four o'clock on a Sunday morning and drag them into court [...] You are more likely to change your behaviour, change what you sing in a ground, if there are four or five police officers round about you, in their full uniform, than you are if there's some wee, snivelling b****d with a camera behind you. (Fan Focus Group 7)*

3.69 An even greater issue for many supporters was a concern about the disproportionate targeting of young fans. Some older supporters recounted singing songs or behaving in a particular way as teenagers that could nowadays result in sanctions under the Act. For many, it was considered part of being a young supporter, especially a young male supporter, as notions of masculinity were emphasised regularly. Learning which behaviours were acceptable and which were not was regarded as an important part of growing up:

I mean, being 15 years old, I remember singing the songs and giving it all the, the lyrics, just to antagonise the Celtic fans. And I realised pretty soon after that, probably two years after that, probably about 17 before I started actually thinking about these things and realised that...you couldn't behave, you wouldn't behave like that outside and being in a football ground didn't mean it was suddenly acceptable. (Fan Focus Group 6)

3.70 A key part of this perceived 'learning' process was considered to be self-policing amongst support, some of whom would regularly intervene to reprimand younger fans for unacceptable behaviours or language. Self-policing was emphasised by various fans as the most effective way to rid football of particularly offensive behaviours, more effective than legislation in this respect.

Like I said, it is fading away. If you heard FTP⁶⁶ back then, you'd get hundreds, thousands of folk joining in. Last week, you'd maybe get ten. And they were all blootered (Fan interview)

⁶⁶ This is a common contraction representing the insult "F*** the Pope".

I don't think young guys should be jailed for being nothing more than a ned, that's all they are. When you hear it at the football you normally just hear it once, because you normally see a reaction from the crowd saying 'that's no' allowed' (Fan Focus Group 2)

3.71 Supporters spoke of a sense of unfairness at what was perceived as the 'criminalisation' of young football fans, and suggested that they were simply seen as 'easy targets' for police and stewards. One older supporter who attends all matches, home and away, described an occasion in which he challenged police for what he considered to be random and disproportionate targeting of young fans:

you know Tynecastle when you come up the steps you come under the stand and you're walking out and it's just a mass of bodies. And almost everybody to a man was singing XXXX, everybody including myself. And there was two police officers next to me. And I'll be honest with you, I was deliberately singing a bit louder, looking for what might be a reaction because I know the trouble they've had up in the other section for singing that song. But these two officers tried to squeeze past me and I could see that their target was about three or four youngsters that were holding up an Irish tricolour. I could see that that was their target and I blocked them deliberately. And I eventually said to them, "Do you guys have a problem with that flag?" and the guy said "No" and I said "you seem to be because it looks as though you're engineering your way across there". And he said "No, it's the song they're singing". I said "But I'm singing the song. Everybody is singing the song." What I'm trying to say with this is those young lads were an easy target (Fan Focus Group 1)

3.72 Even fans that were supportive of the legislation in principle voiced concerns that young people are being targeted for behaviours that were at least tacitly tolerated for many years, and as such they have grown up considering these as 'normal':

that's where they missed out with the legislation you know it was 'this is not acceptable and we are cracking down on it' and it's suddenly us and them.... there's a lot of them at 16, 17, 18 years of age, and quite frankly are probably, poorly educated, you know, their mothers and fathers have sang the song, they've been at the football since they were a young kid and they've heard that, and that's where the challenge goes in, but that challenge doesn't need to be as Draconian...(Fan interview)

3.73 Others echoed this unfair targeting of young football fans that long preceded them and originated well outside the confines of football:

The way people think, these opposing fans and their political identities and where they come from are very much ingrained within the family. And I think that's where the Bill [Act] falters, because it's very much taking these people who have grown up with this ideology and its ingrained in them completely, that's what they've grown up to do, they don't see anything wrong with it, and you are trapping them, you are punishing them for the way they have been brought up, and it aint necessarily their fault. Need a much broader approach, broader

education. Why these things are bad, why it's not acceptable. You are setting people to fail with this, because you are just saying, you are letting people live the way they want until they go to a football stadium then they sing these songs and you are arrest them for it (Focus Group 6)

3.74 The consequences of being prosecuted under the Act were widely discussed. Some high-profile cases which were well known due to high levels of media coverage were supplemented with stories about young people known to the participants. One fan talked about a friend who was 'visited' and almost charged for happening to be holding a flag that was being passed around the section. The flag was the "starry plough" and he was, as is common with flags in some fan sections, just passing it along above his head when the image was caught. (Focus Group 6) One of the more extreme examples is captured in the dialogue below:

...he was filmed at XXXX, in April 2013. And this boy has been due to appear in court 4 times. And there's 4 police officers that are...he was filmed from the trackside, on the upper tier, he's the one person that got picked out. And the 4 police officers, 4 dates and one court date the police officers didn't bother to turn up. So this is going on and on and on until December he missed a court date. And that's why he's remanded, for missing a court date. But the police failed to turn up before, his lawyer's failed to turn up before, so by January 2014 this boy is lying in a cell. It's not even been proven that he's guilty...

–he'll probably lose his job

– and that's the downside of this Act. So he's appearing on XX

February for something that happened in April 2013 – what cost? Even the justice system is letting everybody down on this. The cost for having 4 dates, for having a boy lying inside for 6 weeks. (Fan Focus Group 2)

3.75 The implications for the young person involved, including the likelihood that he would lose his job, were of concern to the majority of supporters involved in the focus groups. The perceived failure of the criminal justice system, and the fact that the young man was one picked out of a crowd for singing the same song as those around him, epitomised the disproportionate targeting of young people.

*'you look at supporters that's going to affect their working lives, in terms of you've got to explain to your employer.. 'oh I've been arrested under a bill (sic) that doesn't make any sense, I can't come into work on Monday'. 'Why?' Because I'm going to stand in court for Monday for ten minutes and then got told to b****r off' (Fan Focus Group 7)*

3.76 Fans differed in their stances on whether issues with policing and stewarding would result in them eventually deciding to stop attending football matches. One supporter suggested that the treatment of football supporters, including the level of surveillance, would not be accepted in any other social activity, and spoke of the impact on enjoyment of the game:

my neighbour goes to the bingo, she gets in her car, drives over to XXX, goes to the bingo and gets home. She has a great time. I come over here and I'm like a criminal, and I've no' done anything (Fan Focus group 2)

3.77 Members of official supporters groups, particularly those which tend to attract younger and more 'hardcore' fans, reported a reduction in members because of the threat of the impact on their lives outside of football. Many fans described changing the types of games attended, such as attending home matches only as it was considered more risky to attend away games (Fan Focus group 1)

3.78 The issue of clubs not supporting their fans also came up regularly in discussions. There was a strong perception that football clubs (some in particular more than others) were happy to charge high ticket prices and reap the benefits of fans' dedication but would generally not provide support on the subject of perceived mistreatment by police and stewards.

They might as well put over the Tannoy – come in, sit down, shut up and leave after 90 minutes, thanks for your money (Fan Focus group 3)

Well from my point of view, I love the way the Green Brigade have created an atmosphere in this ground. And I've brought customers here and they've felt that experience – they didn't watch the game, they were watching what was going on – for the right reasons. And I thought the atmosphere that was created there, the displays we've had in this ground and at cup finals, at Hampden, has been absolutely brilliant, second to none. And I just think that had we harnessed that and controlled it, and got the maximum from it, we wouldn't be having these current problems.(Celtic fan)

3.79 The concern that the legislation was 'killing the game' by having a negative effect on the atmosphere at many matches was also voiced regularly.

People like it when it goes off like that, there's no question about it. When the fact that certain Rangers-Hearts games have been quite tame...it's a big disappointment to me. You prefer it when they're lively, a bit mad. I'm thinking about the last time at the tail end of their existence in the Premiership. So it has to be acknowledged, I suppose, that people, football supporters like the tension. (Fan Focus Group 6)

Policing and stewarding football: issues of inconsistency

3.80 One of the difficulties that confronted the effective enforcement of the legislation, and frustrated many fans was the inconsistency with which fans and fan behaviour were perceived to be dealt with at different stadia. This is perhaps reflected in our survey, where respondents were consistently more negative in relation to attending away games than they were for attending games at home (see Table 4.1 and 4.2 below) Police respondents recognised this as a historic difficulty in the policing of Scottish football, in so far as different police areas and different club stewarding operations could not only approach match day policing and security

differently, but they could also make quite different judgements about the particular level of risk posed by a particular fixture:

They would decide on the risk of a match but they didn't have a process for it and because there wasn't a process never mind it not being consistent it was based on what we've always done for that match - you know, why is it we've got so many officers at some places, we've got no officers at other places? (Senior Police Officer)

3.81 For fans this could lead to frustration in terms of away game experiences veering between unexpectedly 'light' and unnecessarily 'heavy' levels of policing and security. With this uncertainty, came uncertainty about what behaviours were and were not permissible at different grounds.

At XXX my bag got searched 4 times. What's happening to us is that every away game is different...But all these rules and regulations are set in place, they're discussed with our security team. But they don't communicate that to us, the fans that are travelling. (Fan Focus Group 4)

3.82 This was compounded by a perception that stewards and police officers dealt (or did not deal) with behaviour very differently, and this could lead in turn to very uncertain outcomes. If nothing else it would appear that different levels of policing at different fixtures and the different contexts surrounding offensive behaviour itself, could lead to very different outcomes. For instance, if pre-match assessments resulted in a fairly low-key approach to policing, but then the police on the day were confronted with a large number of fans singing an offensive song, the outcome could be very different from a more heavily policed match with more isolated singing:

So...we've been criticised at court as well saying obviously there's been a stand of, for example XXX supporters, at the XXX game singing this song, why have you only arrested one? Well we don't know who all these people are for a start, there's only two of us there, we can only stop and speak to one or two people at the same time. (Middle ranking police officer)

3.83 This different approach to policing was seen as frequently leading to unfair outcomes and with certain fan groups being more heavily policed than others:

I find Scotland (the national team) fans offensive with their kilts and nothing underneath it. That's what I find offensive, walking up there drunk, but they're allowed to do it and they're policed differently again, another example of difference. They're allowed to drink outside the stadium. (Fan Focus Group 1)

3.84 This perceived inconsistency of approach was particularly marked when it came to stewarding, with fans and officials noting excessively aggressive and over-assertive stewarding in some stadia, particularly since the advent of the Act, contrasting with stewards in many other areas who were perceived to be either uninterested or incapable of having a role in policing offensive behaviour:

Well I would think half the stewards wouldn't have a clue and I would say the same for the police, some of them. (Football Intelligence Officer)

...and this guy turns up and he would be screaming about whatever mistake a XXX player made. He would scream abuse at them, and I was like 'Wow, wait a minute...' And he was swearing and it was foul, and some of the stuff he would come out with just outrageous against the other side. And I was really embarrassed for my children and...

... [suggestions from other respondent that a steward might intervene]....

Nah, the stewards, nah the stewards get involved if somebody is standing. And they come up to tell him to sit down. When there is stuff like that going on, they run a bloody mile. (Fan Focus Group 5)

Stewarding /policing capacity and capability

3.85 In spite of the attention given to enforcing the Act in Scottish football stadia, aside from the added national resource of FoCUS, the approach to policing stadia has broadly continued along the lines of reducing costs by moving towards 'police free', or at least, 'police-lite' stadia, where stewards have more of a role in maintaining safety and order. This move away from a heavy police presence in favour of local enforcement strategies inevitably will give rise to the local variations in strategy outlined above. Although in no instances were stewards primarily responsible for enforcing the Act, their involvement could be critical, whether in terms of discouraging fans from misbehaving, or in reporting offensive behaviour to the police when it occurred. Although stewards did appear to be effective to some extent in certain areas, fans' perceptions of stewards as poorly paid and of low status, the perceived frequent turnover of personnel which made it difficult to 'ingrain' an appropriate knowledge of the Act, and the associated shortage of experienced stewards, were regarded as combining to produce very uneven approaches. Standards of stewarding were seen to veer between the over-assertive to stewards who either lacked the required knowledge, or interest, to help enforce the Act. These problems were extensively reported by police officers and fans alike.

Interviewer: So, are the stewards essentially not getting on board in terms of enforcing the legislation?

Respondent: Far from it. Would you? Would you if you were Monday to Friday in your profession and on Saturdays you decide you want to be a steward and are you going to get yourself actively involved in a court case? (Football Intelligence Officer)

3.86 Although police officers were subject, much more consistently, to higher levels of training, and had access to extensive guidance and support, the changes towards fewer police officers in stadia worked against having a large pool of officers

of officers experienced in policing football. As one officer responsible for training noted:

I haven't been able to do enough training nationally to satisfy myself that the officers...all of the officers that turn up at football are sufficiently trained, that's partly because you can't abstract them for an outrageous amount of time and also you can't get enough of them that I may train 20 officers at a training course one day and then they might be at a football match...six months away. In which case some of the training that they've had has been lost! (middle ranking Police Officer)

3.87 With fewer experienced officers in the stadia and a greater reliance on stewards, fans perceived policing to be more disengaged and distant, typically finding them in situations of higher risk, standing in section corners or on the touchline with cameras.

Fan 1 – I think the problem with the coppers is they have no leeway. They cannae make decisions themselves in the ground, they cannae say to yous two 'behave yourself, you can't sing that'

Interviewer– that's a good point because some fans refer back to days of a bit more discretion

Fan 2 – common sense

Interviewer – have you noticed a change in that?

Fan 2 – if you're given a camera by your boss to go and film somebody you're no just going to keep it in your pocket, you're going to stand there and film and we think that's where the problem's coming from, they're looking for it

Interviewer – do they actually come up and talk to you at all?

Fan 3 no, if the police come anywhere near you at all during the game you're getting arrested, simple as that. They'll never come anywhere near you, they'll keep their distance and it'll be filming the whole time. (Fan Focus Group 4)

3.88 Club security officials, some fans and some experienced police officers themselves stated a preference for less reliance on stewarding and a more engaged style of policing. This did not in some respondents' minds imply a requirement for more police; rather a smaller, more stable cadre, of officers with a good knowledge of a particular fan group, the advantage being that experienced officers could spot known individuals who were likely to cause trouble, and could ward off trouble simply by being closer to the fan group:

if they see us (police officers) and we're standing in front of them they won't sing the song. I know for a fact that they've sung the song in front of local officers, and if you're at (other named clubs) they'll sing the songs with impunity. (Football Intelligence Officer)

3.89 But this more proactive and intelligence-led style of policing was also dependent on a good degree of trust and communication between police officers and fan groups, and a number of police officers and club security officials alike believed that the fans' sense of grievance in relation to the legislation and its enforcement had damaged these relationships:

Is that worth criminalising that person for? And that is something you have to be careful with because of course the knock-on effect, the bigger picture of that is that you start to have a wedge being driven between policing and football fans and the danger really is wider than just the vocal group I mentioned earlier on. The danger is the wider support, who if they sense, like any group of people, if they sense unfairness or perceive a victimisation they will start to change their view on policing as well. (Club security official)

It's [the implementation of the Act] probably eradicated any sort of rapport or possible rapport between supporters of Celtic, Rangers and the police, which I think for the safe, for making the game as safe as it can be you need some... call it a working relationship is the best term, the police need to know where they stand with the supporters and the supporters need to know where they stand with the police. (Fan Focus Group 7)

3.90 Caution needs to be exercised however in attributing these tensions solely to the introduction of the Act, as whilst some respondents' did make a link between more confrontational policing and the Act, *how* the Act was policed was a tactical choice, not an inevitability, and some senior officers advocated very different approaches:

If I could sit Celtic fans next to XXX fans... you go to Murrayfield, and I know it's a different culture, and perhaps it's a different background and society... but I think we can move that bit closer to Murrayfield than we actually have, by segregating them and giving them titles, and marching them off for doing this, and watching them, and proverbial militias and big vans and mobile supports and public order unit.. it's nonsense we don't have that scale of challenges, you might have for Celtic-Rangers [...] but I think sometimes we just overplay it, and that doesn't help, it just aggravates the situation (Senior Police Officer)

3.91 Finally, even where police-free football was seen to be working well, this had been achieved within the context of a sustained investment in capable, more proactive, intelligence-led policing. In many areas this level of investment was not apparent: for instance football intelligence officers were restricted to a very part-time administrative role that rarely allowed them to attend matches or develop intelligence on risk groups. As a consequence judging levels of risk and planning effectively for different fixtures became more problematic.

A lot of the football intelligence officers aren't getting out to actually see who (the risk groups) are, so...people can get around that by saying they're just a bunch of wee boys that don't really get involved in anything but when you actually go and deal with them they're not a bunch of wee boys. (Football Intelligence Officer)

3.92 Weak intelligence was also associated with difficulties in effectively resourcing the enforcement of football banning orders. As bans post-conviction did not usually come with any direct measures to ensure compliance (such as some sort of 'sign-on' condition during matches), the only means of ensuring compliance (short of spotting the banned individuals in a crowd of thousands) was good intelligence on their intention to attend and their likely whereabouts.

Policing violence

3.93 Poor police-fan relationships and an under-investment in intelligence were seen as particularly problematic because regardless of their support for the legislation there was a consistent view amongst police officers from the Central belt that more traditional 'risk groups' had been increasingly active over the 2012-2014 period in terms of engaging in pre-arranged fighting. Although difficult to support with statistical evidence (because many fights remain formally undetected), these accounts contrast sharply with accounts given in the previous football banning order evaluation back in 2010-11 when police officers were unanimously of the view that such risk group activity was at a low level (Hamilton-Smith et.al., 2011). Both large and small teams were now identified as having active risk groups, with in some instances younger fans 'graduating' towards membership of risk groups that had previously been the preserve of older fans.

The problems before were less, I think they've got worse now almost it's harking back to the 70s in terms of the [team X] risk, the risk were calling themselves ultras, before just tended to be engaged in pyrotechnics, displays, banners, now crossing over to the risk side of things, fighting...(Football Intelligence Officer)

3.94 Some police respondents felt that both the police and the media were too preoccupied with in-stadia issues at the cost of giving due priority to this violence, which predominantly occurred well away from the game and the stadia:

The mass fighting before the XXX game didn't make it into the paper, the media focus on what happens in the ground. (Football Intelligence Officer)

the legislation's not impacting on them, in fact I see them as more active towards each other. That isn't impacting on them because they, the risk groups, I can only really speak for XXXX because a lot of ...[mentions three different 'ultra groups'] they're the ones that are getting themselves caught, so the older risk groups don't engage in sectarian singing because the way they see it is, I'm not going to get caught for that." (Football Intelligence Officer)

3.95 Three Football Intelligence Officers alluded to occasions when, due to a lack of prior intelligence being provided by officers responsible for visiting clubs, they had been confronted with unexpected incidents of disorder. As one officer noted, an under-investment in intelligence could be self-perpetuating, because it could effectively lead to officers refusing to recognise that they had a problem in the absence of any evidence (thus mitigating the need for any greater policing attention). This point was vividly demonstrated in one interview when the

interviewer was shown a publicly available online video, filmed by a local resident from their flat window:

XXXX and XXXX, two teams who have Football Intelligence Officers but neither club has a risk group....Allegedly....

[sound of video footage in background which shows fans from these two teams fighting each other in a residential street]

Explain to me, what is this? If you're in your house, or if you've got young children and that's happening outside your door? Right, watch this. Bof! That kid is completely out! Now he's not moving. [young white, male lies unconscious in the middle of a road.....]Now I'm sorry, somebody singing a song in a stadium [.....]is not at the same level as that ... (Football Intelligence Officer)

3.96 The quality and investment in intelligence assets clearly varied across Police divisional areas however, with some determining to maintain a strong investment (Senior Police Officer), whilst other areas felt that they had benefited from the training resources provided by FoCUS which had allowed them to build up a more skilled set of officers available to help with football operations (Football Intelligence Officers X2).

Refinements and innovations

3.97 Although the Act faced a number of challenges, in particular in terms of the context in which it was being enforced, a number of refinements and innovations had the potential to ameliorate some of these issues. Principally, many of the aspects of enforcement that had disgruntled some fans, and which were particularly associated with FoCUS, such as the over-use of cameras and frequent instances of retrospective arrests long after a game had finished had – at least in the opinion some police and security officers – become less prominent. Although FoCUS had initially suffered from being associated (fairly or otherwise) with the politics of police reform and mergers - with the imposition of a distinctly ‘Strathclyde’ style of policing, the Unit over time had come to be seen as a more neutral resource servicing Police Scotland as a whole. As FoCUS has developed, it has taken a more limited role in terms of actively enforcing the Act at games, preferring instead to train local officers in the use of the Act and key enforcement tactics (such the use of cameras), while attending games on a more responsive basis (e.g. at the request of local match commanders). Some respondents claimed that fans too were now less likely to notice FoCUS officers because they were less prominent in the stadia, were more likely to be perceived as just members of Police Scotland, and made more discreet, and less constant, use of camera equipment:

now our cameras are very small and discreet so people don't actually see them, obviously that took a couple of months to get that organised but now we're a wee bit more discreet when we're out there. (middle ranking Police Officer)

3.98 Aside from training other officers in camera use for evidence gathering, and training relating to the Act generally, FoCUS had also taken a strategic role in

attempting to improve police capability and consistency. Indeed the very presence of FoCUS at games across the country appears to have indirectly exerted a certain scrutiny of different local policing practices, and provided some degree of pressure on local officers to police matches to a consistent standard. Other strategic roles undertaken by FoCUS included:

- Acting as a central clearing house for national intelligence, including adding to local intelligence ‘narratives’ by pulling together a more national view of issues.
- Taking on the role of developing intelligence packages around more prominent risk supporters, with the aim in some instances of seeking football banning orders.
- Supplementing local policing capacity when it comes to undertaking more extensive or more difficult post-match inquiries, including in many instances acting as the go-between between local officers and fiscals when it came to preparing cases for court.
- Promoting other ways of improving decision making around the implementation of the Act, notably via the establishment of a ‘case markers forum’ which aimed to promote shared learning and best practice amongst police officers responsible for ‘marking’ cases in terms of charging suspects appropriately, and submitting evidence effectively.
- Finally FoCUS was also perceived by other officers to be changing some of its practices away from some of the tactics that had particularly incurred criticism. Notably, FoCUS had started to work more around non-stadia issues, in particular around violence away from football grounds (Football Intelligence Officers X2). It had also been active in promoting better case handling to avoid situations where suspects charged with comparatively modest offences, such as offensive singing or displays, were not unnecessarily detained over the course of a weekend:

Initially, people were getting arrested and they were getting detained in custody for singing an offensive song, got kept overnight and then taken to court the next day. We've tried to encourage local officers to release a lot of the arrests on undertakings so they're not getting kept in. (middle ranking Police Officer)

3.99 A final area of tentative improvement and refinement reported by some officials was in stewarding at Rangers and Celtic. For example, at Rangers, stewarding had been brought ‘in house’ allowing the club to deploy stewards more responsively to club needs than had been possible with externally-contracted stewards. A further key change was that stewarding sections were also now headed by ex-police officers, mostly of Inspector rank or above, though with each regardless having substantive experience in policing football. The employment of in house stewards was also intended to allow for a more stable core of experienced stewards to be developed. The premise behind these changes was of having fewer police officers in the stadia but a more experienced cadre of stewards, who were known to the fans, and would be better placed to proactively monitor and influence fan behaviour.

4. The impact of the legislation

4.1 The key challenge in measuring the impact of the Act is that the very fixtures associated with its introduction (namely the derby between Rangers and Celtic) ceased to occur after Rangers Football Club PLC went into liquidation, and the newly re-formed club joined the Scottish third division for the 2012-13 season. In the absence of these fixtures, any straightforward measurement of trends in football-related disorder or offensiveness becomes impossible. Though we review police statistics for football related offences in this chapter, our main way of assessing the impact of the Act was through our fan survey, and the perceptions of fans themselves in terms of changing levels of disorder and offensiveness.

The fan survey asked questions that were both season specific in terms of the prevalence of certain behaviours, first in the 2012/13 season and then in the 2013/14 season as well as questions about the prevalence of these behaviours compared to 'previous seasons'.

Prevalence of behaviours

4.2 Of the possible offensive behaviours that we asked about in the survey, by far the most prevalent witnessed by home and away supporters was swearing at players and officials (see table 4.1 below), witnessed by over 90% of supporters in the 2013/14 season. Apart from swearing, the most common 'specific verbal' behaviour experienced was hearing negative references to a person's religious background, heard by around one-third of both home (28%) and away supporters (35%) during at least one game in the 2013/14 season. This was more prevalent than hearing negative references to skin colour (8% of home supporters), country of origin (19%), gender (10%) or sexuality (19%).

4.3 The prevalence of these 'verbal' potentially offensive behaviours experienced by supporters was very stable between the 2012/13 and 2013/14 seasons, including the more general 'verbal' behaviour of hearing songs that the supporters found offensive.

Table 4.1 Prevalence of types of behaviour witnessed by home supporters during 2013-14 season

Proportion of games at which behaviour witnessed	All or almost all games %	Some games, up to around half %	No games %	Bases
Types of behaviour				
Swearing at players / officials	74 (-3)	22 (+2)	3 (-)	2044
Swearing at other supporters	38 (+1)	41 (+2)	21 (-3)	2020
Negative references to a person's skin colour	2 (+1)	6 (-1)	92 (-)	2032
Negative references to a person's religious background	4 (+1)	24 (-2)	72 (+1)	2030
Negative references to a person's country of origin	2 (-)	17 (-1)	81 (+1)	2024
Negative references to a person's gender	1 (-)	8 (-2)	90 (+1)	2024
Negative references to a person's sexuality	2 (N/A)	17 (N/A)	81 (N/A)	2023
Fighting with other supporters / police / stewards	1 (-)	24 (+2)	75 (-3)	2043
Letting off flares	1 (-)	54 (+9)	45 (-10)	2053
Throwing missiles	1 (+1)	24 (+4)	75 (-5)	2040
Displaying banners that you found offensive	2 (+1)	21 (+3)	76 (-5)	2042
Singing songs that you found offensive	3 (-)	39 (-)	58 (-1)	2043

N.B. Figures in brackets show percentage point change from 2013 survey

4.4 Supporters, particularly away supporters, experienced an increase in 'non-verbal' potentially offensive behaviours in 2013/14, compared to the previous season (see Table 4.2 below). These behaviours included fighting, letting off flares, throwing missiles and the displaying of offensive banners.

Table 4.2 Prevalence of types of behaviour witnessed by away supporters during 2013-14 season

Proportion of games at which behaviour witnessed	All or almost all games %	Some games, up to around half %	No games %	Bases
Types of behaviour				
Swearing at players / officials	65 (-2)	28 (+1)	7 (-)	1594
Swearing at other supporters	48 (+1)	37 (+1)	15 (-2)	1586
Negative references to a person's skin colour	3 (+2)	13 (-1)	84 (-1)	1574
Negative references to a person's religious background	7 (+2)	28 (+1)	65 (-3)	1575
Negative references to a person's country of origin	5 (+2)	20 (+1)	76 (-3)	1570
Negative references to a person's gender	2 (-)	12 (-)	86 (-)	1562
Negative references to a person's sexuality	3 (N/A)	19 (N/A)	78 (N/A)	1560
Fighting with other supporters / police / stewards	3 (+1)	29 (+5)	68 (-7)	1587
Letting off flares	6 (+2)	53 (+12)	40 (-15)	1596
Throwing missiles	3 (+2)	27 (+6)	70 (-8)	1591
Displaying banners that you found offensive	4 (+3)	24 (+3)	72 (+6)	1592
Singing songs that you found offensive	6 (+2)	34 (-)	59 (-3)	1594

N.B. Figures in brackets show percentage point change from 2013 survey

4.5 The greater perceived prevalence of problematic behaviours (aside from swearing at officials and players) at away games is not surprising given our qualitative findings which consistently found evidence that fans found attending away games to be more unpredictable and intimidating.

You know it's more comfortable at your home ground cos you know the group round about you and the atmosphere round about, people can chip in and say things. But if you go an away match, you're not with the same group, maybe 1 or 2 friends [.....] There was a chap next to me smoking, I had to say to the steward...So that was away from home. If it had been at home you're round your own group, you'd have had a lot of support saying 'hey, that's enough'. (Fan Focus group 6)

4.6 The lack of a distinct difference in reported prevalence between the 2012/13 and 2013/14 seasons is not particularly surprising, in so far as we would anticipate that such a relatively 'blunt' set of measures would be able to register change over such a short period. However, when we asked fans to compare current behaviours with a more sweeping assessment of 'previous seasons' some distinct trends emerged.

4.7 In both the 2012/13 and 2013/14 seasons, a larger proportion of supporters (home and away) felt that all of the measured behaviours (with the exception of letting off flares) were *less* common than in previous seasons, compared to the

proportion who thought they were more prevalent. For example, 40% of home supporters felt that negative references to religious background were less common in 2013/14 than in previous seasons, compared with only 3% who thought that this behaviour had increased. In 2014, over half of supporters felt that the prevalence of all these behaviours (apart from letting off flares) was at about the same level as in previous seasons.

Table 4.3 Prevalence of types of behaviour witnessed by home supporters during 2013-14 season compared to previous seasons

Prevalence of behaviour compared to previous seasons	More common %	Less common %	About the same %	<i>Bases</i>
Types of behaviour				
Swearing at players / officials	7 (-)	12 (-1)	81 (+1)	2009
Swearing at other supporters	5 (+1)	19 (-3)	76 (+2)	1956
Negative references to a person's skin colour	2 (+1)	39 (-1)	59 (-1)	1804
Negative references to a person's religious background	3 (+1)	40 (-1)	56 (-1)	1851
Negative references to a person's country of origin	2 (+1)	38 (+1)	60 (-2)	1822
Negative references to a person's gender	2 (+1)	35 (+2)	63 (-3)	1792
Negative references to a person's sexuality	2 (N/A)	36 (N/A)	62 (N/A)	1798
Fighting with other supporters / police / stewards	7 (+2)	36 (-)	57 (-2)	1875
Letting off flares	32 (+2)	21 (-3)	47 (-3)	1905
Throwing missiles	5 (+1)	34 (-)	61 (-1)	1855
Displaying banners that you found offensive	6 (+1)	30 (-2)	63 (-1)	1868
Singing songs that you found offensive	8 (+2)	32 (-2)	60 (-)	1894

N.B. Figures in brackets show percentage point change from 2013 survey

Table 4.4 Prevalence of types of behaviour witnessed by away supporters during 2013-14 season compared to previous seasons

Prevalence of behaviour compared to previous seasons	More common %	Less common %	About the same %	Bases
Types of behaviour				
Swearing at players / officials	8 (+3)	8 (-2)	83 (-2)	1520
Swearing at other supporters	8 (+3)	11 (-3)	81 (-)	1513
Negative references to a person's skin colour	2 (+1)	32 (-)	66 (-1)	1402
Negative references to a person's religious background	6 (+3)	30 (-1)	64 (-2)	1426
Negative references to a person's country of origin	4 (+3)	30 (-)	67 (-1)	1414
Negative references to a person's gender	2 (+1)	29 (+1)	69 (-2)	1390
Negative references to a person's sexuality	2 (N/A)	29 (N/A)	69 (N/A)	1394
Fighting with other supporters / police / stewards	7 (+2)	28 (-1)	65 (-2)	1460
Letting off flares	32 (+5)	17 (-1)	50 (-6)	1464
Throwing missiles	7 (+3)	28 (-)	65 (-2)	1439
Displaying banners that you found offensive	8 (+3)	25 (-1)	67 (-2)	1437
Singing songs that you found offensive	10 (+4)	24 (-3)	67 (-)	1456

N.B. Figures in brackets show percentage point change from 2013 survey

4.8 These positive assessments of change were stronger for home games attended than away games. Again our qualitative research with fans and officials alike supported these accounts of positive change. Even in focus groups where fans were adamantly opposed to the legislation, participants acknowledged that they had stopped behaving in ways that could lead to a charge under the Act (Fan Focus Groups 1, 3 & 4). Fans were highly wary of the risks of acquiring a criminal record for one moment of imprudent behaviour, although the sanction that some fans most readily feared was not a criminal sentence per se, but the football banning order that might accompany it.

a banning order hits home. If I got banned for football for three months, I'd be devastated, I wouldn't know what to do with my time. Because your whole kind of social aspect of your weekend revolves around football. [...] I think the banning orders are definitely the way forward, I would combine them with a social education of some sort. (Fan Focus Group 6)

4.9 Other fans, whilst acknowledging that there was less offensive behaviour, felt that many of these improvements actually pre-dated the Act (Fan Focus group 6).

4.10 These perceptions of positive change may partially account for an observed drop in *charges* made under the Act over time, with charges dropping from 268 in

2012/13 to 203 in 2013/14, with the biggest drop being those charges associated with offensive behaviour directed towards another person's religion (down from 40% of all charges under the Act in 2012/13 to 30% of all charges in 2013/14) (Skivington and Mckenna, 2014, p. 7). Even when we add the charges made under section 74 of the Criminal Justice Scotland Act 2003, the legislation most commonly used for such behaviour before the advent of the Act, there is still an observable decline in charges over this period (Mckenna and Skivington, 2014, p. 6).

Table 4.5 Home supporters hearing negative reference to religious background by club supported

Proportion of games where home supporters heard negative reference to religious background	All or almost all games %	Some games, up to around half %	No games %	Bases
Club support				
Celtic	13 (+6)	30 (+3)	56 (-10)	378
Rangers	11 (+1)	31 (-7)	58 (+5)	229
Other club	1 (-1)	21 (-4)	78 (+4)	1423
All clubs	4 (+1)	24 (-2)	72 (+1)	2030
<i>Base</i>				2030

N.B. Figures in brackets show percentage point change from 2013 survey

Table 4.6 Prevalence of negative reference to religious background witnessed by home supporters during 2013-14 season compared to previous seasons by club supported

Prevalence of negative reference to religious background compared to previous seasons	More common %	Less common %	About the same %	Bases
Club support				
Celtic	8 (+5)	40 (-11)	52 (+6)	349
Rangers	3 (-)	50 (-7)	46 (+6)	207
Other clubs	2 (-)	40 (+3)	59 (-3)	1295
All clubs	3 (+1)	40 (-1)	56 (-1)	1851
<i>Base</i>				1851

N.B. Figures in brackets show percentage point change from 2013 survey

4.11 Given the focus of enforcement of the Act to date on behaviour particularly associated with Rangers and Celtic supporters, Table 4.5 and Table 4.6 look specifically at the perceptions of these supporters. Here, home supporters of both Rangers and Celtic were somewhat more likely to hear negative reference to religion in 2013/14, than supporters of other clubs, on average (see Table 4.5). However, large proportions of home supporters of both clubs, Rangers (50%); Celtic (40%), felt that this type of behaviour was less common than in previous

seasons. This perception of improvement was occasionally (and somewhat grudgingly) acknowledged by fans of other teams.

So I suppose it has improved slightly because there's less access for the XXX fans in particular to behave the way they used to do. But the general attitude, there's still a very strong element of looking after yourself when you go to XXX (Fan Focus group 6)

4.12 Official respondents though, were less guarded in recognising positive changes:

When we first started [...] it was almost like there was a song timetable and you knew at six minutes this tune was going to tune up, just before half time you were going to get this song, and after half time you would get some other thing. And...you just don't get that now. (Football Intelligence Officer)

A big improvement, personally. No longer are they coming up en masse and singing their songs. That's a real boon for us as well. (Senior Police Officer)

Having to listen and say 'did you hear a peal of XXXX, I think I heard a bit of it.' Whereas you normally you have a full.. you have the whole lot of them singing it, now you get a few and it gets stopped. (Senior Police Officer)

4.13 Our own, albeit limited, observational work as part of this study, also found limited evidence of offensive singing at both Ibrox and Celtic Park. COPFS data provides further tentative support, with charges associated with matches at these two venues falling from 73 charges in 2012/13 to 40 charges in 2013/14.

4.14 However, although there were clear indications of improvements in fan behaviour, there were also accounts in our qualitative data of various forms of negative adaptation to the risks and controls presented by the Act. This ranged from some members of 'ultra' groups turning to other forms of disorderly behaviours such as letting off flares, fighting, and damaging stadia seating (Football Intelligence Officers X4) to some individuals continuing to make offensive remarks but taking steps to avoid detection (Senior Police Officer, Football Intelligence Officer).

They are aware now it's criminal, but they still sing it, but they sing under banners etc. Even in away games they will sing it, and they will sing it in pubs. (Football Intelligence Officer)

4.15 Again, our observational fieldwork and interviews with stakeholders around stadia provided some tentative evidence that offensive behaviour was to be readily found outwith the stadia on match days, whilst 'saving' behaviour that might be deemed as offensive for what fans judged as 'low risk' (as in low risk of effective enforcement) away games was also seen as a common form of adaptation.

4.16 Conversely however, there were also indications of more positive changes in fan behaviour, in particular an increase in self-policing, at some clubs, by fans.

This had been evident before the Act on occasions when clubs qualified for European games, and many fans reacted with disapproval to behaviour or displays that risked getting their team fined or sanctioned in some other way by UEFA (Football Intelligence Officer) but there were also indications of greater levels of self-policing in the domestic game generally (Fan Focus Group 1, 4 & 6, Fan interviewee) though whether this is attributable in any way to the Act is difficult to determine.

Official data on football-related offending

4.17 Aside from the perception of fans themselves about changes in standards of behaviour in and around football fixtures, the other sources of data that might provide some indication of the impact of the Act, include police, crime survey and Crown Office data.

4.18 Prior research by the Scottish Government (Cavanagh 2011) had shown that there was some association between football fixtures, in particular fixtures between Rangers and Celtic, and spikes in various forms of criminality and anti-social behaviour. Notably anti-social behaviour (typically captured before the Act in the offence of 'breach of the peace'), violent crime, and incidents of domestic abuse were all associated with these events. Such spikes did not necessarily testify to any unique relationship however between football and crime as the Government's analyses also demonstrated that other public holidays and large crowd events (which all might in turn be commonly associated with the consumption of alcohol) were also associated with notable spikes in similar types of criminality.

4.19 There are also a number of methodological issues with trying to measure post-Act changes in levels of violence and disorder at, and around, football. Principally, shortly after the introduction of the Act, the reconstitution and relegation of Rangers FC removed from the football fixture the key clash that was associated with spikes in crime and disorder. Whilst the two clubs' meeting in February 2015 may have provided some reminder of the crime and disorder issues involved, changes in predispositions towards violence and disorder can hardly be gauged from one fixture.

4.20 A brief examination of police statistics and survey estimates from the Scottish Crime and Justice Survey show that broader crime trends make it extremely difficult to make judgements about the impact of the Act. Both police recorded, and crime surveys figures show sustained falls in most of the relevant crime categories, both before, and after, the introduction of the Act:

- Between 2008/09 to 2012/13 violent crime, as measured by the Scottish Crime and Justice survey fell, by approximately 25% whilst within that category, assaults fell by 24% (Scottish Government 2014b, p.16).
- Falls in police recorded violent crime were even greater. In particular in the sub-category of non-sexual violent crime, by 2013-14 incidents had reached its' lowest level since 1974 (Scottish Government 2014c, p. 21) falling by approximately 27% between 2008/9 and 2012/13 alone (Scottish Government 2014c, table 5, p. 59).

- Similarly, recorded incidents of breach of the peace fell by 24% over the same period, even though this headline offence category *included* the new offences charged under the Act after 2012. The decline in the offence category however predominantly occurred *before* the introduction of the Act (Scottish Government 2014c, table 6, p. 61)
- Glasgow, whilst retaining the dubious distinction of being the most violent city in Scotland, nevertheless shared in the falls in incidents during these periods, with non-sexual crimes of violence falling by over 50% between 2008/09 and 2013/14 (Scottish Government 2009, Table 6, p. 25 and Scottish Government 2014c, table 6, p. 61)

4.21 Thus any judgement of the impact of the Act has to be made against the backdrop of sustained and historic falls in violent crime not only in Scotland, but across the UK as a whole (Office for National Statistics, 2014). Some insight may be gained from additional questions added to the 2012/13 Scottish Crime and Justice Survey which looked more closely at the sorts of harassment, intimidation and insult that might be seen by many as a key target of the Act. 10% of respondents in the survey reported being insulted, pestered or intimidated in some way in the previous months, though for the large majority (over 80%) this did not extend beyond verbal insult or harassment (Scottish Government 2014b, p. 68). However, when the survey probed victims to see what they thought lay behind the offenders' behaviour (such as an intention to insult the victim on the basis of their race or ethnicity), only a quarter of respondents provided a possible motive. Of this sub-set, some 8% felt the intimidation or harassment was motivated by issues of ethnicity and race, whilst 4% of men, and 1% of female respondents who had been victimised identified sectarianism as a possible motivating factor. Given this very low level of prevalence of victim-identified sectarian harassment or intimidation, it is unsurprising that only 3% of survey respondents as a whole reported being 'worried' or 'very worried' about being 'insulted, pestered or intimidated due to sectarianism' (ibid p. 68) compared to 25% of the sample being worried about being assaulted or attacked in the street, or 19% of the sample being worried about being caught up in violence between groups (e.g. gangs). (ibid, p. 62).

4.22 Though the Act is not focused on domestic abuse, a number of respondents during this research speculated that incidents of domestic violence might increase as supporters – frustrated by controls on their behaviour in stadia – would take out their frustration on their partners and spouses. Such assertions would be hard to evidence. Whilst research has shown associations between football and domestic violence (Brooks *et al*, 2014), these associations cannot be shown to demonstrate a direct, *causal relationship* (as opposed to football and domestic violence sharing some common features, such as attracting certain types of problematic men, being associated with leisure time and public holidays, and being associated with the consumption of alcohol). Moreover, again, here too, Scottish Crime survey figures⁶⁷ show, an albeit very modest, fall in self-reported domestic violence

⁶⁷ footnote: police figures do not provide reliable trends for this crime type given that only 13% of victims are estimated to confide in the police, and in total only 21% of all incidents come to the attention of the police by some means (MacQueen, 2014, p. 33)

(between partners), with incidents of psychological and physical abuse declining from 5% of respondents in 2008/09 to 3% in 2012/13 (MacQueen, 2014, p. 11).

4.23 The most targeted approach to trying to measure the impact of the Act would be to look at levels of arrest or charge in and around stadia on match days. Such an approach though would have some fundamental limitations. Aside from the aforementioned changes in the composition of Scottish leagues, and associated changes in fixtures and rivalries, levels of arrest and charge in and around stadia may be said to be particularly prone to changes in policing, and changes in decision making around charging. These are of course, precisely areas that have been subject to significant and deliberate change, not merely as a result of the introduction of the Act, but also associated developments such as the establishment of FoCUS, and largely coincidental developments such as the establishment of Police Scotland. Changes in levels of arrest and charge might therefore be said to be as likely to reflect these changes in policing and criminal justice decision making as any 'natural' change in the propensity of individuals to commit offences in and around football. With these substantial caveats in mind there are three readily available sources of data on trends in football related offending. First, there are police recorded crime statistics, which chart the number of incidents at, or around football. Incidents, it should be noted, are not the same as charges, as a single incident might involve a number of individuals charged with a number of different offences.

Table 4.7 Breach of the peace and s. 1 and s. 6 OBFTC Act offences, 2004-05 to 2013-14 (recorded crime incidents) ¹					
Crime category	2009-10	2010-11	2011-12	2012-13	2013-14
Breach of the peace²	87,403	58,432	33,710	25,072	21,755
% change on previous year		-33%	-42%	-26%	-13%
Offensive behaviour at football³	-	-	[22]	154	126
% change on previous year					-18%
Threatening communications³	-	-	[1]	41	11
% change on previous year					-73%

Notes:

1. Taken from Scottish Government 2014c, Table A8, p. 74

2. This is a sub-category of the larger offence category of 'breach of the peace' which normally incorporates section 1 charges.

3. Offences introduced in March 2012

4.24 Table 4.7 shows a reasonable decline in section 1 charges between 2012-13 (the first full year of the Act's use) and 2013-14. However, first, two years' of data does not give us a sufficient period to make any judgements about trends; second, any reduction must be viewed in the context of much larger reductions in breach of the peace that occur both concurrently with, but also long before, the introduction of the Act. Finally, the figures provide some pause for thought in appreciating, in particular relative to the attention paid to the Act, how few incidents there are actually recorded under section 1.

4.25 An alternative snapshot of football-related offending can be found in looking again at figures compiled by the football banning order authority (now located alongside FoCUS). These figures cover s.1 offences but also breach of the peace (s. 38), or culpable and reckless conduct (typically flares or smoke bombs covered under s. 20 of the Criminal Law (Consolidation) (Scotland) Act 1995), or any other type of offence that was linked to a football match⁶⁸. It should be noted however that the figures do not incorporate offences that might be more 'distantly' linked (e.g. an incidence of domestic violence at a residential property). Nevertheless, whilst like all the figures reported here, these figures are far from perfect, they perhaps better attempt to capture than others the 'footprint' of crime and disorder associated with football matches.

Table 4.8 Offences Reported to the Football Banning Authority		
Football seasons	All offences	% change
2011-12	428	
2012-13	355	-17%
2013-14	323	-9%
2014-15	323 ¹	n/c

Notes:

1. Annual figure up to February 2015 is 246 – the total for the remainder of the relevant year is estimated using the typical proportion of annual offences occurring in the remaining period between 2011-12 and 2013-14.

4.26 Though direct comparison with Table 4.7 is difficult due to different reporting periods these figures do nevertheless evidence similar trends, with fairly substantial declines in charges in the first two years of the Act, though with a possible 'levelling out' in the most recent football season.

4.27 One final data source that provides some broad indications of trends in football related offending is data compiled on section 1 charges by the Crown Office. These statistics were reported on in detail in Skivington & McKenna (2014):

⁶⁸ though excluding offences such as being 'drunk and incapable' or alcohol- related offences covered in the Criminal Law (Consolidation) (Scotland) Act 1995

Table 4.9		Section 1 Charges 2012/13 to 2013/14 (adapted from table 6 in Skivington & McKenna, 2014, p. 7)	
	2012/13	2013/14	
Total number of charges	268	203	
% change		-24%	
Number of Rangers/Celtic charges ¹	153	103	
% of all charges	57%	51%	
Section 1 charge sub-categories²			
Total number of sub-charges	290	234	
of which 'religion'	106 (37%)	60 (26%)	
of which 'support for a terrorist organisation or celebrating loss of life'	46 (16%)	57 (24%)	
of which 'race/ethnicity'	19 (6%)	17 (7%)	
of which 'sexual orientation'	0	1 (<1%)	
of which making threats/challenging other to fight	119 (41%)	99 42%	

Notes:

1. Club-affiliation of individuals charged with offences
2. Some charges involved multiple sub-charges, so sub-charge totals are not the same as charge totals

4.28 Again, these statistics evidence a similar decline in charges during the first and second full years of the Act's operation. The figures also detail how supporters of Rangers and Celtic continue to attract the majority of s. 1 charges, though at a slightly lower rate in 2013/14 than in the previous year. Crown Office figures also allow us to examine the changing characteristics of charges in terms of which elements of s.1 they relate to. Whilst offensive behaviour offences under s. 1 remain the main type of charge in both years, there are some notable changes in the types of crime that predominate. Notably, s. 1 was hardly used in either year to tackle offensive behaviour offences targeted at someone's sexual orientation, and was only used sparingly to target race-related offences. In contrast, the proportion of charges relating to showing support for a terrorist organisation or celebrating loss of life rose markedly between the first and second year of the Act's operation.

The limited use of s.1 to tackle homophobic or race-related offensiveness seems surprising given that, whilst not as prominent in the experiences of supporters in our survey or focus groups as religious offensiveness, these were forms of offensiveness that nevertheless attracted particular opprobrium, and indeed in our 2013-14 survey were experienced fairly frequently (see table 4.2, page 57). For instance, 22% of survey respondents witnessed negative references to sexuality when attending away games in the 2013/14 season, but only one conviction was recorded for offensive behaviour based on sexual orientation in that period.

4.29 In summary, what can these various sources of data tell us about trends in football related crime and disorder, and more specifically about the impact of the Act? There have been significant declines in officially-designated football-related

offences though the available data covers far too short a span of time to allow one to reliably associate any trends with the introduction of the Act, or indeed the associated attention and resources given to the policing of football-related offences both in the year running up the introduction of the Act (2011-2012), and in the immediate aftermath of its introduction. Whilst football-related offences have declined, there are two key competing explanations for this decline, both of which are plausible, and both of which may have partially contributed to the observed declines:

- The drop in charges reflects a genuine decline in disorder and offensive behaviour.
- The initial peak of charges in the first full year of the Act naturally dropped off after the initial wave of publicity, and the keen attention given to implementing the Act by the Police and other relevant partners, subsided.

4.30 Our survey findings provide tentative support for the notion that *at least some* of these reductions may be due to a real improvement in offensive and disorderly behaviour on match days. However the extent to which these reductions can be attributed to the impact of the Act is far from clear, not least given the substantial and sustained reductions in many categories of violence and disorder across Scotland and the UK as whole.

5. Concluding remarks

5.1 How best are we to judge the effectiveness of section 1 the OBFTC Act? Arguably the 'bottom line' measure(s) relate to actual levels of offensiveness, in particular as experienced by fans themselves, but also via secondary indicators such as official recorded crime figures and conviction statistics. In this respect, the data that are available would certainly suggest that offensiveness at matches has declined, as most persuasively evidenced by our surveys of fans, and reinforced in interviews with fans and stakeholders alike.

5.2 There are of course a number of hefty qualifications that must be applied to prevent any premature attribution of this reduction to the Act *itself*. There are figures to suggest that these reductions to an extent pre-date the Act. Nevertheless a good number of fans and stakeholders interviewed through this research noted that there had been a marked drop around the period of the Act's Introduction, in particular a reduction in those forms of offensiveness that were widely perceived to be the central target of the Act. Even some of the fans most strongly opposed to the Act, whilst bemoaning the dearth of match day atmosphere that followed in their view the clamp down on their favoured songs and chants, had nevertheless emphatically stopped singing *those* songs. That said, whether this reduction was due to the Act itself or to the policing and prosecution resources put in place sometime before the Act is impossible to answer. At one level it may be argued that this is a moot point, in so far as these developments were all complementary parts of the same drive to address the problems in football that flowed from the events on and off the pitch during the 2010-11 season. Certainly our work would suggest that what marks out the Act is not (primarily) that it stakes out some wholly new territory, bringing within the ambit of the criminal law behaviours that were previously free from any legal sanction. Rather it is the political intent behind the legislation that distinguishes the Act. This, combined with the resources that complemented its introduction, emboldened the authorities to bring more prosecutions and strengthened the law through highlighting and clarifying what the problems with these offensive behaviours were, thereby facilitating more successful prosecutions (at least initially).

5.3 It was apparent both from our surveys and from our qualitative research that most fans knew what songs and remarks were offensive. Nevertheless, one recurring criticism of the Act is that it leaves it substantially open for the police, acting in the capacity of the *reasonable person*, to exert a high degree of discretion in determining whether behaviour is offensive. A constant theme in many fan focus groups was that supporters needed greater clarity, and definitive lists, about what songs or remarks were offensive, and that they should not be subject to the variable standards of different police officers, or to future changes in terms of what society may or may not deem as offensive. However, the fact that social standards and normative values *do* change, and that the law needs to be dynamic enough to cope with such change, is a fairly accepted and commonplace observation. Relatedly, there will always be tests in terms of behaviours that raise genuine uncertainty in terms of their acceptability and legality, and that may be subjected to legitimate debate and in some instances subject to judicial determination. Equally, it has to be acknowledged that offensiveness is very contextual, that behaviour that

goes unremarked in one context, may be dangerously inflammatory in another. The need to be alive to context, and for the law to be applied in a way that is flexible enough to cope with context, is not the same as the law being applied inconsistently, and whilst some fans did raise examples that would suggest some instances of unwarranted inconsistency in decision making, in other instances what seemed to be being described was a sensible attention to context.

5.4 Conversely conversations around the Act also at times seem to attract a slightly artificial commentary, dividing football fans into a false binary between certain fans of Celtic and Rangers who use games to vent bile and bigotry, and most other types of fans who merely want to attend games free from any 'banter' or offensiveness. This was not evidenced in our research. Many otherwise relatively sedate fans often talked nevertheless about enjoying the atmosphere created by younger fans who were engaged in singing and 'banter'. Whilst one comparatively 'middle-class' focus group of fans from the East of Scotland described motivations for going to games that clearly gave primacy to songs and to 'winding up' the opposition (including 'wind-ups' that actually fell squarely within the reach of the Act). Winding up the opposition might certainly be argued to be a fairly deeply-rooted aspect of football 'fandom'. The question is whether, and when, 'winding-up' oversteps a certain line, when it becomes unacceptably offensive and/or threatens disorder. What our fan focus groups certainly demonstrated is that it is not always straightforward to define where this line sits, or indeed to preclude the possibility that otherwise law abiding fans might occasionally inadvertently cross such a line. In these instances, some element of discretion and dialogue between the police, stewards and fans seemed helpful, and in particular self-policing amongst fans as a mechanism to ward off the emergence of clearly offensive behaviour.

5.5 Fans and stakeholder participants alike therefore at times seemed to create an artificial binary between behaviour that merited no attention and behaviour that fell within the remit of the criminal law. In reality, such a dichotomy masks the fact that there is a sliding scale of offensiveness that requires the involvement of fans and clubs before, and/or as well as, criminal justice agencies, and that would recommend the use of other non-criminal remedies and sanctions for behaviour that falls in this problematic middle ground.

5.6 There was strong evidence to show that the Act in the short term had created an atmosphere of mistrust and tension between the police, stewards and some fan groups. In this research it was notable how often indeed fan groups, who conventionally had nothing to do with the violent risk groups that engaged in traditional football 'hooliganism,' were often referred to in terms of being 'risk groups'. This widening conception of football fans in terms of 'risk' seemed unhelpful. It could be argued that the Act was always going to attract hostility in some quarters because it attempted to tackle long-standing and long-cherished behaviours that had gone comparatively unchallenged. However, it would seem critical going forward that relations between fans, clubs, stewards and the police are appreciably improved, as constructive relations are critical both in terms of the enjoyment of the match day experience, but also if match days are to remain safe occasions. There is a substantial and distinguished repository of academic research that has persuasively evidenced how order is better maintained at football

if the police have a good relationship with the majority of fans, and adopt where possible a less confrontational 'public order' style of operation, working with fans to self-police (Stott et. al., 2012; Hoggett and Stott 2010; Stott and Pearson 2007). This indeed is a style of policing that Scotland has traditionally had a reputation for excelling in, and we should be reluctant to relinquish it.

5.7 One final means through which one might judge the 'success' of the Act is in terms of the number of convictions. Here of course there has been a recent fall in the rate of convictions. What is behind this fall is open to question. Some of our judicial respondents did comment that there were issues with the quality of evidence, although whether this indicates some issue with official capability further down the criminal justice 'pipeline' or whether it in fact indicates that more difficult or more controversial cases are now being brought to court, is unclear. A low conviction rate might also be problematic for the credibility of the Act. Many of the section 1 charges are for comparatively less-serious behaviours, and in such cases it is open to question whether it is fair or proportionate to subject charged individuals to long periods of uncertainty (often combined with quite stringent bail conditions) when the probability of being found guilty is comparatively quite low⁶⁹. Here, it may be prudent particularly for less serious charges - to consider faster, diversionary measures, leaving the full weight of the criminal process (with its attendant cost implications and further burdens on the criminal justice system) to more serious offences.

⁶⁹ Though it may be, of course, that in the Scottish jurisdiction offences of equivalent seriousness that are *not* football-related, take equivalent periods of time to be concluded.

References

- Beccaria, C. (1963) *On Crimes and Punishments*. Indianapolis: Bobbs-Merrill
- Brooks, O., Crowley, A., Lombard, N. (2014), 'Football and Domestic Abuse: A Literature Review', SCCJR Research Report No. 06/2014
- Bruce, S., Glendinning, A., Paterson, I. and Rosie, M. (2004) *Sectarianism in Scotland*, Edinburgh: Edinburgh University Press
- Cavanagh, B. (2011) 'Analysis of Police Incident Statistics on Days of Major Events', Draft Working Paper for Scottish Government Justice Analytical Services, June 2011
- Clark, R. D. (1988) 'Celerity and Specific Deterrence: A Look at the Evidence', *Canadian Journal of Criminology*, (30): 109-120
- Crabbe, T, Brown, A. Mellor, G. and O'Connor, K (2006) *Football: An all consuming passion?* EA Sports Research
- Crowe, F (2014) 'The test for causing alarm' *Journal of the Law Society of Scotland*, October 2014, available online at: <http://www.journalonline.co.uk/Magazine/59-10/1014579.aspx>
- Devine, T. M. (ed.) (2000) *Scotland's Shame: bigotry and sectarianism in modern Scotland*, Edinburgh: Mainstream
- Feely, M. M. (1979) *The Process is the Punishment*. New York: Russell, Sage
- Ferguson, P. (2013) *Breach of the Peace*. Dundee: Dundee University Press
- Goodall, K, P Hopkins, S McKerrell, J Markey, S Millar, J Richardson, and M Richardson (2015) *Community Experiences of Sectarianism*, Edinburgh: Scottish Government Social Research
- Goulding, A. & Cavanagh, B. (2012) *Religiously Aggravated Offending In Scotland 2011-12*, Justice Analytical Services, The Scottish Government
- Goulding, A. & Cavanagh, B. (2013) *Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act (2012) in 2012-13*, Justice Analytical Services, The Scottish Government
- Hamilton-Smith, L.N., McArdle, D., Bradford, B., Tilley, N, Hopkins, M. and Kurland, J. (2011) *An Evaluation of Football Banning Orders in Scotland*, Edinburgh, Scottish Government Social Research
- Hamilton-Smith, L. N. and McArdle, D., (2013) 'Football, Sectarianism and the Limits of Law' in J. Kelly and J. Flint (eds.) *Bigotry in Scotland*, Edinburgh University Press

- Hinchliffe, S., Marcinkiewicz, A., Curtice, J. & Ormston, R., ScotCen Social Research (2015) *Scottish Social Attitudes Survey 2014: Public Attitudes to Sectarianism in Scotland*, Edinburgh: Scottish Government Social Research
- Hoggett, J. and Stott, C. (2010) 'Crowd psychology, public order police training and the policing of football crowds', *Policing: An International Journal of Police Strategies & Management*, 33 (2): 218-235
- Kelly, E., (2003) 'Challenging Sectarianism in Scotland: The Prism of Racism', *Scottish Affairs*. 42:32- 56
- Office for National Statistics (2014) *Crime in England and Wales, Year Ending June 2014*, available online at: http://www.ons.gov.uk/ons/dcp171778_380538.pdf
- MacQueen, S. (2014) *2012/13 Scottish Crime and Justice Survey: Partner Abuse*, Edinburgh, Scottish Government Social Research
- Mckenna, J. and Skivington, K. (2014) *Religiously Aggravated Offending In Scotland 2013-14*, Justice Analytical Services, The Scottish Government
- Ministry of Justice (2012) *Provisional statistics on the timeliness of criminal court cases*, London: Ministry of Justice
- Scottish Government (2009) *Recorded Crime in Scotland, 2008-09*. Edinburgh, Scottish Government
- Scottish Government (2014a) *Criminal Proceedings in Scotland, 2013-14*, Statistical Bulletin, Crime and Justice Series, Edinburgh: Scottish Government
- Scottish Government (2014b) *Scottish Crime and Justice Survey 2012/13: Main Findings*. Edinburgh: Scottish Government
- Scottish Government (2014c) *Recorded Crime in Scotland, 2013-14*. Edinburgh, Scottish Government
- Skivington, K. & Mckenna, J. (2014) *Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act (2012) in 2013-14*, Justice Analytical Services, The Scottish Government
- Special August 2015 issue of *Scottish Affairs*, vol. 24(3), on sectarianism
- Stott, C. and Pearson, G. (2007) *Football Hooliganism: Policing and the War on the English Disease*. London: Pennant Books
- Stott C; Hoggett J and Pearson G (2012) 'Keeping the Peace': Social Identity, Procedural Justice and the Policing of Football Crowds', *British Journal of Criminology*. 52(2): 381-399
- U.S. Department of Justice, Bureau of Justice Statistics (2003) 'Felony Sentences in State Courts, 2000', *Bulletin NCJ 198821*, Washington, DC: U.S. Department of Justice

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The data collected for this social research publication:

- ☐ are available in more detail through Scottish Neighbourhood Statistics
- ☐ are available via an alternative route <specify or delete this text>
- ☒ may be made available on request, subject to consideration of legal and ethical factors. Please contact Ben.Cavanagh@Scotland.gsi.gov.uk for further information.
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