CHAPTER 5: Standalone offence: racially-aggravated harassment and conduct

The salient features of section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 (racially-aggravated harassment and conduct) were examined in chapter 1. The provision is set out and analysed in paragraph 2.2.2 of the Academic Report.

Racial crime remains the most commonly reported hate crime, although the most recent figures from the Crown Office show the number of racial charges at its lowest level since 2003-04. In 2016-17, 3,349 charges were reported: this includes both charges under section 50A and charges to which the section 96 racial aggravation has been added. It is of note that there has been a shift over a period in the balance between the reporting of charges under section 50A and other charges with a section 96 aggravation. In 2010-11, 62% of the charges were under section 50A and 38% related to another offence with a racial aggravation. The proportion of section 50A charges has fallen steadily year-on-year, such that in 2016-17, 44% were under section 50A and 56% involved a section 96 aggravation.

There are two ways in which the section 50A offence may be committed:

1. A racially-aggravated course of conduct which amounts to harassment of a person. “Harassment of a person” includes causing the person alarm or distress. “Conduct” is defined as including speech and a “course of conduct” must involve conduct on at least two occasions.
2. Acting in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress.

In each case the course of conduct or the behaviour is racially aggravated if one of the same two thresholds which feature in the statutory aggravation provisions described in the previous chapter is met: (a) in the course of conduct the offender “evinces” towards the victim “malice and ill-will” relating to race; or (b) the behaviour is motivated by malice and ill-will on a racial basis.

The offence might apply, for example, where one person shouts racial abuse at another in the street and causes distress as a result. This offence was created because of concerns that the problems of racial harassment and racially motivated violence were not treated seriously enough by the criminal justice system.

In many situations the conduct caught by section 50A could also be prosecuted as another offence aggravated in terms of section 96. In certain circumstances the conduct might amount to a contravention of section 38 of the Criminal Justice and Licensing (Scotland) Act.
2010 (threatening or abusive behaviour) together with the section 96 aggravation. Or the circumstances might amount to a breach of the peace aggravated in terms of section 96. In relation to maximum sentence, section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 carries a maximum prison sentence on summary conviction of 12 months⁶ and on indictment 7 years. The section 38 offence has a maximum sentence on indictment of five years and on summary conviction of 12 months. Breach of the peace at common law has no maximum on indictment and the normal 12 months on summary complaint.

In order to prove the section 50A offence, all parts of the offence including the racially aggravated element must be corroborated. This means there must be evidence coming from more than one source pointing to the racial element. By contrast, where a prosecution is brought under a different general offence (e.g. assault) with a statutory aggravation, there must be more than one source of evidence for the assault, but there needs only be one source of evidence for the aggravation.

We would welcome the views of consultees as to whether there are any circumstances in which conduct presently prosecuted under section 50A could not also be prosecuted as some other offence with a statutory aggravation.

Depending on what the ultimate answer to that question is, two further questions may arise. First, if the section does cover any different conduct, then the question arises whether there is a need for equivalent provision in respect of other protected characteristics. Secondly, if it does not, then the question arises as to whether there is any benefit in having a contravention of section 50A as a separate offence.

**Question:**
Is this provision necessary? Please give reasons for your answer.
Should the concept of a standalone charge be extended to other groups? If so, which groups? Please give reasons for your answer.

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⁶ The original provision set out a maximum prison sentence on summary conviction of 6 months, but this was increased to 12 months by virtue of the Criminal Proceedings etc. Reform (Scotland) Act 2007, s. 45.