

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM FANS AGAINST CRIMINALISATION

Fans Against Criminalisation is a campaign group set up to defend the rights of football supporters. We successfully campaigned for the Repeal of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. Our campaign continues to advocate on behalf of football supporters and to offer assistance to those who have been unfairly targeted or criminalised in the course of supporting their team.

We have responded below to the Hate Crime Bill consultation using the framework provided on the Scottish Parliament website.

***General***

**1. Do you think there is a need for this Bill and, if so, why? Are there alternatives to this legislation that would be effective, such as non-legislative measures, wider reforms to police or criminal justice procedures? Are there other provisions you would have liked to have seen in the Bill or other improvements that should have been made to the law on hate crime?**

We are unconvinced that this Bill is necessary, with elements included which cause us grave concern however that is not to say that we disagree with all aspects of the proposed legislation. Our campaign was set up initially as a response to the introduction of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, which was entirely unnecessary, counterproductive and fundamentally unjust. That experience has damaged the faith of our organisation, and that of football fans more broadly, in the ability of legislation to successfully deter certain behaviours or in the wisdom of such an approach.

***Consolidation***

**2. The Bill brings together the majority of existing hate crime laws into one piece of legislation. Do you believe there is merit in the consolidation of existing hate crime laws and should all such laws be covered?**

***How to prosecute hate crime?***

Despite our concerns with the need for this legislation, we do understand to some degree the merit in consolidating existing hate crime legislation. Our opposition to what is being proposed is regarding additional scope which this Bill seeks to grant for the prosecution of new hate crime offences.

**3. Do you think that the statutory aggravation model should be the main means for prosecuting hate crimes in Scotland? Should it be used in all circumstances or are there protected characteristics that should be approached differently and why? For example, the merits of a statutory aggravation for sex hostility rather than a standalone offence for misogynistic harassment?**

We support the aggravation model used for hate crimes in Scotland and would oppose the notion of standalone offences for the protected characteristics other than race. The aggravation model allows for prejudiced motivations to be considered and factored into sentencing, as is correct given the impact of hate crime not just on victims but on society more broadly. We believe however that there should be a high legal bar set to ensure that whilst the public is protected from hate crime, freedom of thought and expression is protected as well.

**4. Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation? Would any alternative means be measured effective? For example, would there have been merit in introducing a statutory aggravation (outwith hate crime legislation) for the exploitation of the vulnerability of the victim?**

***Other forms of crime not included in the Bill***

We do not have a set position on a new aggravation regarding age hostility, however as an organisation that has seen young people be disproportionately targeted by the police under previous legislation, we support attempts being made to protect people from age discrimination and harassment.

**5. Do you think that sectarianism should have been specifically addressed in this Bill and defined in hate crime legislation? For example, should a statutory aggravation relating to sectarianism or a standalone offence have been created and added?**

We do not believe that an aggravation or a standalone offence for ‘sectarianism’ would be helpful or wise. The term itself is fiercely contested and acts as a barrier to understanding and tackling religious bigotry and racial hatred in Scotland.

With aggravations included regarding religious or racial hatred, there is no need to muddy the waters with an additional, less specific and more vague aggravation for ostensibly the same thing. It would be much more helpful to specifically define aggravations as being ‘anti-Catholic’, ‘anti-Irish’ or ‘anti-Protestant’. This would create clear definitions and provide a more transparent picture of the nature of religious bigotry in Scotland.

We have several specific issues with the aggravations as they have been proposed. Firstly, we are deeply alarmed by the language used around religious aggravation which seeks to make it an offence to exhibit intolerance of any group with a perceived religious affiliation. The broad nature of this language means that behaviours which are not motivated by hatred or intolerance of a religion could wrongly be deemed as such under the proposal.

For example, if a person was to criticise the actions of the state of Israel, it could be possible that they may be deemed in breach of legislation and understood as motivated by antisemitism. Another example would be potential criticism of the Orange Order, a flagrantly anti-Irish and anti-Catholic organisation, who would be

protected because of their self-proclaimed religious affiliation. Rather than protecting minority groups, this could have the adverse effect of silencing them.

We are also extremely concerned by the fact that only one piece of evidence may be required for this aggravation, without the need for corroboration. Given our experience of past legislation, whereby the alleged ‘victims’ of songs being sung at football matches for example was often police officers themselves, we are concerned that this would set the legal bar far too low to demonstrate genuinely hateful or discriminatory intent. Other powers granted to the police including the rights to search homes and private spaces, which seems to be extreme and unwarranted in this context, given the nature of offences this element would likely relate to due to the low bar set in other aspects of the Bill.

### ***Stirring up offences***

#### **6. Do you have views on the merits of Part 2 of the Bill and the plans to introduce a new offence of stirring up of hatred?**

The proposal to include a provision for the “stirring up of hatred” is particularly troubling to us for a number of reasons. Chief of these again is the broad language used, which we believe would be used to quell freedom of expression and to once again target football supporters. When the OBFA was proposed as a Bill in 2011, our organisation and others like us warned of the dangers of implementing legislation designed to limit expression with broad scope using broad language.

We predicted that the result of this would be an overuse of these powers by the police, who would quickly begin arresting football supporters for the most minor and trivial of offences, leading to a range of negative outcomes such as termination of employment, football banning orders, social alienation, mental health problems and the breakdown of personal relationships, all of which very quickly came to fruition. We witnessed first-hand the destruction wrought on the lives of people who lost their livelihoods, found themselves shamed in national media or spent several nights in a police station cell or a prison, over charges brought for swearing in public or singing songs about opposition players or fans. These behaviours are arguably rude, but could in no way be characterised as motivated by prejudice based on protected characteristics.

If one were to define a religious aggravation as extending to groups associated with a religion, it is arguably the case that groups of Celtic or Rangers fans, or the clubs themselves, may fit that category. Therefore, theoretically if Partick Thistle supporters were to sing a song expressing their dislike for either or both these clubs, it is eminently possible that they could be deemed to be stirring up hatred based on religious hatred. This example highlights the danger of the broad language used and the low legal bar being advocated. This proposed change would once again grant the police a disproportionate level of power to criminalise football supporters. The police themselves have openly stated their enthusiasm for this Bill for the precise reason that it would allow them to return to the policing of the OBFA era, a piece of legislation which the Scottish Parliament deemed unfit for purpose when it voted to repeal it in 2018. We do not wish to return to these times.

**7. Do you have any views on the Scottish Government’s plans to retain the threshold of ‘threatening, abusive or insulting’ behaviour in relation to the stirring up of racial hatred, contrary to Lord Bracadale’s views that ‘insulting’ should be removed?**

We strongly oppose the proposal that “insulting” behaviour on the basis of the new provisions set out should meet the threshold for criminal behaviour. Threatening or abusive behaviour as motivated by prejudice can be reasonably understood as a hate crime, however to extend this to insults, particularly when considering the broad definition around some protected groups and the low bar for evidence, creates the conditions for a dangerous assault on freedom of expression. If ‘insults’ were sufficiently hateful and damaging, they would meet the bar of ‘abusive’ which is already included. The inclusion of the word ‘insulting’ in this context seems like an attempt to lower the threshold to draw in more behaviour to the hate crime framework, which again could see people unjustly arrested and prosecuted.

We are deeply concerned that this would result in the harassment, vilification and criminalisation of football supporters. We concur with Lord Bracadale that this should be removed.

***Other issues***

**8. Do you have any comments on what should be covered by the ‘protection of freedom of expression’ provision in the Bill?**

Given that it is our position that the new offences around “stirring up hatred” should be removed, it would be our view that in doing so the need for such protections would be eradicated. The existence of the need for such protections within this Bill though demonstrates an implicit acceptance of the dangers inherent within it.

**9. Do you agree with the Scottish Government that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should not be repealed?**

We do not have a specific position to take on this matter though we do of course support sincere attempts to tackle racially motivated offences of this nature.

**10. What is your view on the plans for the abolition of the offence of blasphemy?**

**Your response does not need to cover all of these areas and you can focus on those that are relevant to you or your organisation. Also, you are welcome to cover other areas in your submission that you think are relevant to the Committee’s consideration of the Bill.**

We take no position on the matter of blasphemy, though given the statute has not been used in nearly 200 years, we feel it somewhat disingenuous that this is often cited as the main talking point of this Bill by representatives of the Scottish Government when promoting this legislation in the press. In reality, removing the offence of blasphemy is really a minor adjunct to the actual principles of this Bill and will have no real consequence to the population as a whole, whereas many other

aspects of the proposed legislation could come to have a profound and potentially damaging impact on a range of communities.

Fans against Criminalisation  
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