

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM DONALD FLEMING

Dear Sirs,

This is my response to the Scottish Parliament's Justice Committee's consultation on the Hate Crime and Public Order (Scotland) Bill.

I refer to question six:

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?

My views are as follows:

1. Existing legislation already covers threatening or abusive behaviour likely to cause fear or alarm, so no new law is required. Furthermore, existing provisions within Public Order Act 1986, Section 18(4), include a defence of showing someone had no reason to believe their behaviour would be witnessed by someone outside a dwelling. But the new offences can even be committed in the privacy of a person's own home.
2. Expressions of hatred or what constitutes stirring up of hatred or what is abusive language can be highly subjective, so someone could say something which they genuinely consider to be reasonable and another person might interpret this as stirring up of hatred or being abusive; therefore, any new stirring up hatred offences should only cover threatening conduct.
3. Offences of stirring up hatred threaten freedom of religion and belief, in that people might be legally prohibited from expressing sincerely held beliefs. And this could affect both atheists and people of faith.
4. Someone's religious beliefs and views on morality are extremely important to them. But these can change over time. So in order to for a person to have the means to change their mind in respect of these things, open and vigorous debate is essential. Furthermore, the free speech clause on religion must be strengthened to protect more than mere discussion or criticism; a person should feel free to vigorously challenge the religious beliefs of others.
5. The content of church services is not excluded from the Bill. A sermon in which faith in Jesus is preached as the only means of salvation and all other religions are false, or where homosexual practice is said to be a sin, could render the preacher liable for prosecution for stirring up hatred. In regard to the latter point, the free speech clause on sexual orientation must be strengthened, so that beliefs about same-sex marriage are explicitly covered and more robust debate is also protected. And this should cover debate in a secular setting as well as in a church sermon.

6. People must be free to state what has been historically regarded as a biological reality: that someone born a woman cannot be a man, and vice versa. Therefore, any stirring up hatred offences covering transgender identity must explicitly protect freedom to use a person's birth name and pronoun.

7. In order to protect Police Scotland being inundated with politically motivated or vexatious complaints portraying honest disagreement as hate, free speech clauses must be robust.

8. Freedom of speech is widely acknowledged as a universal human right. So any legislation that undermines this is bad for a society. This proposed legislation does exactly this, in that the mere threat of prosecution for stirring up hatred may cause many to keep quiet.

9. It should be noted that when Lord Bracadale carried out the Independent Review of Hate Crime in Scotland, over 90 per cent of respondents to the review's public consultation were opposed to new hate crimes.

10. Lord Bracadale in the review, mentioned above, said that any legislation should make a clear distinction between 'rational argument' and 'rabble-rousing' and accepted that the right to free speech 'protects expression which shocks, offends and disturbs other people'. This Bill does not give the degree of protection of free speech that he appeared to recommend.

Thank you for your time taken in considering the points above.

Yours faithfully,

Donald Fleming
20 July 2020