

JUSTICE COMMITTEE**HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL****SUBMISSION FROM REV DR MARJORY A MACLEAN**

NB This is an entirely individual and personal response from one Church of Scotland parish minister. I am not writing on behalf of any agency, court or committee of the Church.

I wish to make general comment about the legislative difficulty of striking a balance of fairness through this Bill.

Within Scottish society there are interest groups that wish to be protected in their entitlement to criticise the promotion of LGBTI+ equality. Most of these groups, I suspect, are located within conservative religious communities. What they regard as legitimate (indeed divinely-mandated) criticism and judgement will be felt by others (the LGBTI+ community and the more liberal parts of our religious spectrum) as hurtful and even abusive. What the critics see as reasonable and even loving engagement, those they criticise will perceive as the 'stirring of hatred'.

Human nature being what it is, your committee is more likely to receive strong commentary from those opposed to the thrust of the Bill than from those who applaud it. That means you are likely to receive more submissions from conservative Christian circles than from liberal voices like mine. Therefore the first point I wish to make is:

The changing nature of decisions in the recent General Assemblies of the Church of Scotland should demonstrate to the Committee that those who desire to attack LGBTI+ protections are minority voices within the Church community, and do not represent Scottish Christianity as a whole. Indeed no single view does.

That said, I anticipate that some of those voices (e.g. The Christian Institute) will make a reasonable point in highlighting the scale of the difference between the current UK legislation and the Scottish Bill. With much less robust measures proposed relating to intentionality, threat and the likelihood of stirring up hatred, which cause difficulty to those who wish to be able to continue to speak theologically in ways the rest of us find hateful and offensive, Parliament has a delicate task to guarantee the greatest possible legal protection of free speech whilst doing as much as possible to prevent greater harms. I believe it is a fundamental right in our society that those whose opinions (and the expression of them) I heartily loath must be presumed in law to be allowed to be loathsome. That must however be a rebuttable presumption, where such a liberty is outweighed by a greater harm caused. So where, for example, the young child of same-sex parents is caused distress by public pronouncements of hateful doctrine, there must be a legal boundary to enforce. My second point therefore is:

Religious freedom of expression is not unlimited where it causes a greater harm to another, more fundamental human freedom. Otherwise, however, free speech should be

as untrammelled as possible, so that hateful attitudes meet their accountability in open societal (and theological) debate.

I am describing a spectrum stretching from freedom of expression to protection from harm, and acknowledge that the legislators' difficult task is to identify the point on that spectrum at which the balance of this Bill should rest. However, the issue is complicated by one further serious consideration. If the balance-point is located too far in the direction of protection against hate speech, that will cause great concern in relation to civil liberties but it will not prevent anyone from living full and protected lives; that is because those who oppose LGBTI+ freedoms would not be prevented in living the lives they believe they ought to live, their current relationships and so on. But if the balance-point is legislatively located too far towards freedom of expression, many current realities in many Scottish lives will be vulnerable to aggression. My third and final point therefore is:

When weighing claims of freedom of expression (from people whose own lives are not affected by the views they wish to express) against some of the civil liberties of those whose protections are being thus attacked, the committee will have to take into account that they are comparing two categorically different kinds of rights with different levels of impact.

I acknowledge that these few points will all have occurred to MSPs who have the unenviable task of getting this Bill right. In circumstances in which one narrow point of view may be presented to the committee as if it was the only one current within the Church, I wanted to exemplify a more moderate and complex approach. I wish the committee well in its work.

Marjory A MacLean

Rev Dr M A MacLean

Rev Dr Marjory A MacLean
21 July 2020