

## **JUSTICE COMMITTEE**

### **HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL**

#### **SUBMISSION FROM NEIL SWINNERTON**

Dear Justice Committee of the Scottish Parliament

I am writing to express my concerns on the proposed part 2 of the Hate Crime and Public Order (Scotland) Bill. In my view the proposed new offence of “stirring up hatred” is deeply unsatisfactory.

Statutory legislation has always prohibited incitements to violence, property damage, and other acts of criminality. These existing legal restrictions on speech are clear and uncontroversial. This legislation has always been necessary for society to conduct itself peacefully and for the protection of all.

However, in the proposed new legislation it is far from clear to me what one has to do to be guilty of “stirring up hate”, and especially the offence of “likely to stir up hate”. This proposed new offence is highly subjective and will leave everyone uncertain of where the legal threshold is.

These days there are many people who will accuse someone of “hatred” simply for expressing a view with which they do not agree, no matter how peaceably the view is expressed. This kind of language is now widely used. As a result this proposed legislation (if passed) will be ripe for misunderstanding by the ill-informed, and for manipulation by the unscrupulous.

Consider J.K Rowling’s recent essay on the transgender issue, a matter of increasing public concern at the moment (especially amongst women, and in particular, lesbian women). Is it correct to say that transwomen are women? JK Rowling’s recent essay on this topic has attracted an enormous response, including much that is highly critical of her views. Nevertheless, I fully support JK Rowling’s right to speak out publicly as she did, and for those who disagree with her to speak back in public.

In view of the resulting great controversy over JK Rowling’s essay, can anyone doubt that Police Scotland would have been avalanched with vexatious allegations of “stirring up hatred” under the new legislation? The administrative burden being placed here on Police Scotland will be completely unsustainable, and I note that they have already expressed concern on this point.

Lord Bracadale’s original review recommended a clear distinction between “rabble rousing” (that is rightly illegal) and legitimate debate. This distinction is particularly important on matters of great public controversy. Any proposed new legislation must be clear to protect everyone’s freedom of speech, especially in relation to unpopular or unwelcome views. The proposed new legislation for Scotland simply does not make this protection clear enough.

Yours faithfully

Neil Swinnerton

21 July 2020