

JUSTICE COMMITTEE**HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL****SUBMISSION FROM GOVANHILL FREE CHURCH**

Govanhill Free Church is a worshipping, witnessing and serving community which has been located on the southside of Glasgow for over 100 years. The wider community in our part of the city is well acquainted with many reasons as to why legislation of this kind might be thought necessary. However, there are a number of aspects to the Bill we would like to highlight which cause us concern. We have used the question template from the relevant Scottish Parliament webpage.

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?

While we abhor hatred in any form directed against persons, it is not clear to us that there is a great need for this Bill given existing legislation. At best consolidation would seem to be the greatest need.

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?

We believe there is merit in consolidation where it improves and clarifies existing legislation. The great concern with the proposed Bill is that it will do little for the former and seriously worsen the latter, all the while widening the scope of legislation to a point where previously normal debate and public discourse risks being criminalised.

How to prosecute hate crime?

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?

The statutory aggravation model is used in existing legislation and therefore can claim to be tried and tested. Creating new stand-alone offences is extremely complicated and should be used with great caution. On the other hand, even asking the question “Should it (statutory aggravation) be used in all circumstances or are there protected characteristics that should be approached differently and why?” shows

that there are also great complexities combining the model with definitions of protected characteristics. Inherent in the Bill is the spectre of a proliferation of protected characteristics and subsequent sub-categories of characteristic. This hardly improves or increases clarity in legislation.

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?

Again we believe existing legislation and the pattern of courts taking age in to account when sentencing to be sufficient protection. Perhaps further protection could be offered were statutory aggravation added to legislation dealing with exploitation.

Other forms of crime not included in the Bill

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 are well aware of the violence and abuse generated by sectarian attitudes in parts of Scotland. However, one law related to the issue has already been repealed by the Scottish Parliament after barely six years of operation and so it seems to make no sense to attempt to include the matter in this proposed legislation. Indeed, if the Bill were to pass unchanged there would sufficient provision within it for tackling various forms of sectarianism that may motivate criminal activity. Our concern would be that the Bill, if unchanged, goes well beyond this.

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?

Part 2 of the Bill is the one which causes us the most concern. This introduces a new offence of 'stirring up of hatred', and already there is a problem over definition of the actual offence even in the terms laid out in the Bill. For example, the offence may be committed where there is 'intention' or 'likelihood'. This introduces the distinct possibility of an alleged victim merely perceiving that speech, behaviour, printed or visual material was offensive and 'likely' to 'stir up hatred' towards them. A complaint might then ensue with the result that the police have little option but to follow it up.

We can reflect on our own situation in the Govanhill area of Glasgow where as both a congregation and individuals we frequently meet with and speak with people from a huge variety of backgrounds – whether of ethnic origin, religion, sexual orientation or any other 'characteristic'. Indeed our

congregation is made up of people from such a wide variety of backgrounds. It is also a regular aspect of our worship, witness and service in the wider community that we express our faith and our views on a great number of subjects, both in informal conversation as well more formal teaching and preaching. We recognise that given, for example, the divergence of views we might have with our Muslim neighbours that on occasion some offence could be given. This is never with the intent to 'stir up hatred', nor do we consider it 'likely' that it would do so, and yet it is entirely possible we as a congregation or any individual member of the congregation might be accused of doing so. The complainant might be completely genuine in their sense of offence and that this offence would extend to others of their religious community. Is an individual or a representative of the congregation to be interviewed by the police, premises searched and a possible case brought to court? Is it enough to say that so long as no offence of 'stirring up hatred' has actually occurred the matter will not be taken any further? What of the inconvenience, stress and greater stirring up of divisions an investigation will likely have caused? And all this as a result of poorly thought through and worded legislation.

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 are of the view that retaining 'insulting' in the threshold is to lower it to such an extent as to encourage frivolous and even vexatious complaints to the police. 'Threatening and abusive' only would certainly be easier to define, and therefore Lord Bracadale's recommendation seems appropriate.

Other issues

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

While as a church we would welcome the provision of 'protection of freedom of expression' on religious grounds, it does appear as a somewhat weak provision and that after the horse has already bolted! It also raises the question as to why provision of 'protection of freedom of expression' is not afforded to other areas of the legislation. Why only 'religion' and 'sexual orientation'? For example, the current debate regarding gender and transgender is one where strong opinions are expressed on every side. It would appear the Bill favours bringing much of that debate to a close. This may not be its intention, but it would seem very likely to be the result. If this Bill were to pass it must be with seriously enhanced 'protection of freedom of expression' across the board and this would need careful attention; something not likely possible in the usual time span allotted to Bills.

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 have no reason to believe this should be repealed.

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

While blasphemy (as defined in the Bible) is always as regrettable as it is serious, the extreme difficulty of the State legislating for it in any beneficial or meaningful way means we are sanguine about its abolition. After all, there have been no prosecutions for blasphemy in 175 years and even in that specific case there was no conviction. Perhaps the disuse and difficulty could serve as a warning in relation to the Hate Crime and Public Order (Scotland) Bill 2020?

Govanhill Free Church - on behalf of the Kirk Session

24 July 2020