

## JUSTICE COMMITTEE

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

#### SUBMISSION FROM GLASGOW REFORMED PRESBYTERIAN CHURCH OF SCOTLAND

While there are many commendable parts of the Bill, and while it can be seen as well intentioned, it contains, as it stands, weaknesses which are so serious as to render it, on the whole, more harmful than beneficial.

As a general principle, it is better for the law simply to protect people as *people* - irrespective of which community they belong to, whether these be minority or majority communities. The increasing tendency to select various groups for special protection (a tendency recently manifested in several western democracies) creates complex moral and legal difficulties and can only prove harmful in the long run.

The Glasgow Reformed Presbyterian Church believes that the current provisions contained in Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 are sufficient to deal with any problems envisioned by this Act: To commit an offence under section 38, the behaviour of the offender must '*be likely to cause a reasonable person to suffer fear or alarm*'. Furthermore, the offender must also either *intend* to cause fear or alarm or *be reckless as to whether they did*. As well as making the creation of further offences unnecessary, section 38 establishes a clearer threshold for a criminal offence. That is not to say that section 38 is perfect: indeed, in some respects it is quite vague – but, to us, it is clearly preferable to the proposed alternative.

The only conceivable legitimate exceptions to the principle outlined above, in our minds, would be offences against authority figures – such as the police – and offences against minors and the elderly as well as others in similar categories. Ideological and belief positions ought not come into such categories. Similarly, while all crimes committed on the basis of racial hatred are abhorrent, it seems plain to us that all offences against all races are to be dealt with as offences against *persons*, not as against persons *based on their race* as such.

Therefore, it is no surprise that our major difficulty lies with Part 2 of the Bill and the plans to introduce a new offence of stirring up of hatred. Such offences would be notoriously difficult to assess: they could easily be committed unintentionally by people unaware that their words could be considered abusive.

As a church, our chief concern is that a sermon or lecture in which Christ was proclaimed as the only Saviour and in which other religions were described as being false, or where same-sex marriage was described as sinful, could easily result in the preacher or speaker being prosecuted under such legislation. This country, and western democracies in general, have been understandably wary of curbing a right to belief and to the expression of it. The proposed legislation must have a *robust* free speech clause – one which will not only protect the right to express belief but also the right to vigorously challenge other religious, moral and philosophical beliefs. It ought not to be seen as threatening when a belief system is challenged – even when it is

vigorously challenged: Issues of faith and moral belief are issues about which people have debated for centuries and any society which seeks to close down the right to hold and express moral beliefs or the right to express what the Bible classes as sinful or not sinful has lost the right to call itself 'free'.

Similarly, legislation on issues to do with transgenderism – an issue which is notoriously poorly thought out – needs the protection of a free speech clause: our society must protect the rights of those – Christian, Muslims or atheists – who believe that a man cannot become a woman or that a woman can become a man. The fear of 'offending' those who believe otherwise cannot trump the rights of those who hold this view – based, as it is, on biological scientific fact.

It is our belief that there is a serious risk rising from this legislation that politically-motivated complainants will label disagreement as hatred in order to try to silence their opponents. Increased legislation in this whole area is to be feared: In 2017-18, as part of an Independent Review of Hate Crime in Scotland carried out by Lord Bracadale, *over 90 per cent of respondents to the review's public consultation were opposed to new hate crimes*. The final report recommended a 'stirring up hatred' offence covering a series of protected characteristics, including religion, sexual orientation and transgender identity. Lord Bracadale recommended a free speech clause, acknowledging '*well recognised*' concerns about the '*potential risk to freedom of expression*' – particularly, a concern that '*genuine and legitimate criticism*' could be construed as 'stirring up hatred' and any legislation could have a 'chilling effect on freedom of speech'. Lord Bracadale went on to say that any legislation should make a clear distinction between '*rational argument*' and mere '*rabble-rousing*' and should guard the right to express views which '*shocks, offends and disturbs other people*'.

This Bill, without significant amendment, does not provide such safeguards and would be a serious retrograde step for a country calling itself 'free'.

Glasgow Reformed Presbyterian Church

23 July 2020