

## **JUSTICE COMMITTEE**

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

#### **SUBMISSION FROM DAVID SMITH**

Hate Crime and Public Order (Scotland) Bill

This draft Bill seeks to address the perceived profound harm which hate crime causes to the victim and the community they belong to. The harm caused by any given offence and its lasting impact is a function of the crime itself and the individual victim. There is no unequivocal empirical evidence to suggest that victims who are subject of the arbitrarily defined "hate crime" are more or less profoundly harmed than a victim of a parallel crime. This is a myth to justify the agenda. If there is evidence and data (beyond powerful, emotive, and genuine individual testimony) which has been peer reviewed and published in a scientific journal and has maintained its credibility since publication, then please provide reference to it otherwise this is more legislation based on political agenda, emotion and rhetoric rather than empirical evidence and reality.

I'd be grateful if you could please ask the Minister to define what the specific characteristics of hate crime are which cause a different, more egregious harm to the victim than "normal" crime? What is the moral superiority of a "hate crime" versus "normal crime"? I really would appreciate an explanation, so I can understand the Ministers view on this.

This proposed Bill means that someone can be convicted of an aggravated hate crime where there is no victim. Please can the Minister help me understand why this is both justified and appropriate. Is the Committee comfortable that a constituent of theirs could potentially be convicted of what amounts to a serious offence, and yet there is no victim?

In addition, the Bill wishes to make the aggravated element of any crime, the aspect which will result in the accused potentially facing a far longer sentence than a similar parallel offence, non-corroborated. This seems absurd. Corroboration is a good thing. Removal of the requirement of corroboration lowers the evidential bar and will pit one person's word against another which will be abused by those inclined to abuse it. In relation to proving an aggravated element corroboration should remain.

If you could provide some response in relation to why you think it is reasonable and proportionate to have specific "hate crime" offences I would be genuinely interested to listen and understand.

I have had a look at the dictionary definition of hate which reads something like:

- An emotion of extreme dislike or aversion
- Detestation, abhorrence, hatred
- To hold in very strong dislike
- To detest
- To bear malice to

- To dislike greatly, be extremely adverse

Can we not all fall foul of having this emotion, feeling at some point? Particularly if we are in a scenario where there is heated argument and threat, where tempers are starting to fray, however surely in such a situation emotion and thought can be fleeting, and not representative of our general demeanour, behaviour, thought or personality?

I think the majority of us have said something hurtful towards someone else at some point in our lives, sometimes to people we love. But that does not mean we are hateful, it does not mean we hate the person.

I am worried these aggravated offences, and the court's interpretation of them, will not adequately allow for the differentiation between a strong dislike of one person against other in terms of general characteristics rather than these arbitrarily defined protected characteristics.

How do these laws differentiate between someone's strong dislike of a person, and a specific strong dislike towards a particular characteristic of that person - I may detest someone who is known to be openly gay, but it is not because they are gay that I detest them it is for some other reason, am I therefore guilty of hate crime? Does this mean that all people with protected characteristics can no longer be subject to any type of dislike? How do you differentiate between a medium, strong and very strong dislike? Does the Committee not share such concerns?

I have very strong concerns about the whole concept of "hate crimes", and why the Parliament and Ministers think there is a need for additional laws over and above what we have already in place, and in particular the need for more punitive punishment for such crime. As far as I am aware neither Police Scotland nor the Judicial system has been desperately petitioning the Government and Parliament for these new measures owing to an absolute deficiency in our legal system which is hundreds of years old. Prejudice is not a new human condition.

As mentioned at the outset, if part of that justification relates to the fact that the post victimisation impacts inflicted by arbitrarily defined "hate crimes" are greater than "parallel" crimes, the evidence is patchy and that the impact is largely dependent on the individual. Therefore, if punishment is supposed to be proportionate to harm, a blanket increase in penalty in every case is very blunt, disproportionate and not supported by the existing research. Research by Iganski and Lagou strongly advocated discretion and flexibility in sentencing something the proposed Bill does not provide for.

If all prejudice is unacceptable in a civilised society then why make exceptions of some forms and not others? The obese person who has been verbally abused for years because of their weight problem and has attempted suicide on multiple occasions owing to the persistence, low level systemic abuse they have to put up with on a daily basis, is that less serious than the same verbal abuse being levied at an older person for being old?

What about men who are bald or people who are ginger? You may snigger but bear in mind the low level prejudiced abuse that you yourself have probably exhibited toward people with ginger hair, but that just banter right? But is it? How do you know? Someone that is ginger or bald may be acutely aware of this and be sensitive to comment relating to this. Are these soon to be protected characteristics? If not why not? These examples are not introduced to devalue the effects of racism or sexism, there are to demonstrate that prejudice exists in so many forms that we cannot legislate our way out of it by protecting some characteristics and not others.

In effect to continue to endorse this narrative of "hate crime" the Parliament will effectively be imposing a two-tier punitive legal system, which by its very nature will devalue the severity of the same crime on victims not covered by an arbitrarily defined "protected characteristic". This system will be unfair, and disproportionate.

In essence I have the following concerns:

- Lack of unequivocal high-quality evidence to support the agenda and direction
- Proportionality and devaluation of parallel crimes
- Lack of victim
- Lack of corroboration for the aggravated element – this seems wrong.
- Freedom of Speech – the terms stirring up hatred is non-sensical and could be abused. It will close down open civic discussion and drive such discussion underground.

The issue of unacceptable, criminal behaviour towards one another is already covered by existing legislation in numerous ways.

I can see no unequivocal empirical evidence basis for this line of legislation, or which supports this current political thinking. I do see powerful, emotional accounts of individual victims harrowing experience but if the parliament was so inclined there would be equally powerful, emotional and harrowing accounts for victims of parallel crimes. Emotion is not justification for imposition of extremely poor, authoritarian legislation. I would urge the Committee to reject this Bill.

Kind regards,

David