

## **JUSTICE COMMITTEE**

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

#### **SUBMISSION FROM RUAIRIDH McMILLAN**

Dear Justice committee of the Scottish Parliament,

My name is Ruairidh McMillan,

Further to the hate-crime bill proposed within the hate-crime framework, I have some concerns as a citizen of Scotland under Scot's law, and would like to state these in this email.

The eagerness with which the term 'hate-crime' has been applied began its introduction so vaguely that this bill was the inevitable next step in attempting to ammend its lack of definition. That the public response deeming it an unecessary step has been ignored is telling, in that it is an example of state led intentions which are quite out of touch with reality, likewise the police campaigns (posters etc..) were bizarre from the get go.

The attempt to resolve said vagueness has been only partially successful (which I say having read the bill), but seems to have ignored the weight of public response and is creating a convolution of concerns which might otherwise have been more lawfully just if left to the application of common law.

The memorandum on the bill aknowledges that the majority of feedback from organisations was in favour of the bill (by way of consolidation), and that the majority from individuals were against it, the latter objecting to the validity of the bill on grounds that it would more likely prohibit the grey areas which need be protected by free speech (to which I would add, it is likely to prove especially unfair in nuanced scenarios where the law is unable to determine intent and context - such as online, or worse, a court might determine that context or intent are irrelevant) and would also create a hierarchy based on victimhood which was biased by group affiliation or group membership, rather than an individual's actions, intent and context. This grey area is not resolved by the bill, and has been deferred to the subjectivity of how the hateful intent or thought pertaining to the 'crime' is to be interpreted.

Legislation by group membership is rarely consistent with the intended desire of the legislature to protect because it struggles to provide precise means of application.

Despite the record of Lord Bracadale's mediation, the individual public is demonstrably more concerned (as recorded by memorandum) that it will become increasingly unwieldy when applied to scenarios which will fail to differentiate within human thoughts and actions competently.

Organisations are more likely to follow collective fiat, and it is difficult to parse what biases may be introduced by defaulting to organisational influence or opinion on this matter, difficult, but still concerning in that it is not clear to the public how this law is

to safeguard public freedom of opinion and freedom of expression in Scotland, despite the provisos under section 12.

Racial crime is statistically understood in the memorandum to account for the majority of hate-crimes by category (to date) yet also acknowledges that this has been decreasing year on year. Why is this new hate-crime framework necessary given that the greater proportion of classifiable crimes has reduced considerably?

All victims of hate-crime could be engaged with under common law and statutory aggravations, which are understood by way of people rather than groups, has proven to be the most robust method in providing for the equality of all citizens.

Those who were broadly supportive of hate-crime legislation are noted in the memorandum as having requested 'a victim-centered approach', 'a rights based approach', 'a reproach aimed to address discrimination based on structural-inequalities and power-imbalances in society', all of which are obviously motivated by the desire to provide an opinion which is compassionate, rather than considering how that hypothetical compassion will actually pan out in the real world; the thought process surrounding these suggestions are naive, and are not based on analytical data or a specific solution to a complex problem. I am concerned that such wishful thinking has formed the basis for the lobbying of this bill and has stuck despite the lack of consensus and the still fleeting consistency with regards to an applied definition of the framework in law.

The latter is largely impossible where considerations are determined by group identity alone, and where that identity is in some cases increasingly subjective. 80% of respondents are said to have disagreed with the conceptualisation of a 'hate-crime'; the memorandum acknowledges this, yet seems to ignore the weight of respondents concerns. Much of this data seems to be aggregated between individuals and organisations, but in order to understand the interest of groups which may be vulnerable you need to understand the societal factors which affect them in relation to each other, AND then also to gain data on public opinion. No such data elaborating said factors was visible in the report relating to this bill.

Perhaps in the fitting of this bill it has become easier to oversimplify the possibility of unintended outcomes when this law is applied, and to assume that good intentions will do the trick. That is not viable law, and a surfeit of organisations which consider such matters as best determined via group identity do not necessarily have a clear understanding of the interests of the individuals within the groups they represent, at least not by default.

Thank you for reading this email,  
Sincerely

R J McMillan  
09 July 2020