

## **JUSTICE COMMITTEE**

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

#### **SUBMISSION FROM CARE FOR SCOTLAND**

CARE for Scotland is a Scottish branch of the Christian Action Research & Education (CARE), a well-established Christian social policy charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives.

**Question 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?**

1. CARE for Scotland does not consider that there is a need for this Bill. The existing laws are comprehensive and cover a variety of criminal offences. Laws should be introduced only if the existing laws are necessary to address an issue not otherwise covered by the existing laws. In this context, where there are also clear risks associated with the legislation affecting free speech, we would caution against this legislation extending beyond simply consolidating existing legislation into a single piece of legislation.

**Question 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?**

2. CARE for Scotland believes that the statutory aggravation model, that does not create new offences but in certain cases where a crime is committed, a statutory aggravation may be attached based on the conduct or the motivation of the perpetrator, should be the main means of prosecuting hate crime in Scotland. This approach provides for more clarity and legal certainty as the elements of the crime have to be proven before the aggravation is considered.

**Question 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?**

3. There is a strong argument for aggravated offences in relation to crimes against people who are vulnerable because of their age. However, we are not convinced that aggravation on the basis of hate is the answer. In many cases crimes in this context

will be the result not of a particular hatred towards people because of their vulnerability. A distinction has to be made between targeting an individual because of their age and associated vulnerability because they are 'easy targets' and targeted attacks because of malice and ill-will. They are not the same and should not be conflated. This, however, does not change the argument for an aggravated offence because the criminal in question will be able to see that their victim is an elderly lady with failing eyesight in a vulnerable position. In this context while we believe that the offence should be treated as aggravated, because it involves targeting someone who is particularly vulnerable, we do not believe that the aggravation should be located in the context of a hate crime because this narrows the aggravation to the need to demonstrate malice and ill-will.

4. On the question of whether one should hang things on the concept of vulnerability rather than age, while it is crucial, and indeed it is the role of the criminal law, to protect vulnerable individuals, there is a significant risk introducing laws that are founded on such vague concepts as 'vulnerability.' There are certain characteristics that make one more vulnerable and susceptible to abuse (for example disability and age). Such characteristics need to be clearly identified and defined. However, using the vary vague and fluid concept as vulnerability, may prove counterproductive. The issue needs to be considered further to ensure that the solution addresses the problem.

**Question 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?**

5. CARE for Scotland considers that before the provision is introduced, a review should be conducted to consider how such cases of sectarianism are being addressed, whether the existing laws are able to address the issue and if not, what are the shortfalls and what is the best way of addressing them. This should not be a matter for the public consultation but in-depth research.

**Question 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?**

6. CARE for Scotland believes that such provisions are not necessary. However, if they were to be introduced, they would need to be amended. First and foremost, the provisions should not include 'insulting' in their threshold. The recent story of J.K. Rowling being accused of transphobic twitter statements shows how easy any comments or statements (whether made online or offline), that should fall within the protection of freedom of speech, can be interpreted as amounting to hate speech. In a society respecting and treasuring freedom of speech, we cannot have situations whereby a different or an unpopular opinion is treated as hate speech or hate crime and resulting in censoring such speech. This is the opposite of freedom of speech with a few determining what opinions are protected at the exclusion of all others.

7. Furthermore, Clause 3 would need to be amended to ensure that it centres around the concept of 'incitement to hatred', and so have a clear grounding in *mens rea*. Consequently, Clauses 3(1)(b)(ii), 3(2)(b)(ii), would have to be removed.

8. Clause 4 should be removed in its entirety as it may censor a variety of plays including satire, comedy and others. Any reasonable person should be able to understand that the purpose of public performance of a play is to entertain. The situation would have been different if the performance of a play **incites violence** against specific individuals or a group people.

9. Clause 5 should be redrafted to focus on ‘threatening and abusive’ material and not insulting or inflammatory.

10. CARE for Scotland welcomes the protections in Clauses 11 and 12, namely, the protections of freedom of expression. However, CARE for Scotland believes that to maximise the protection of freedom of speech, the concept of ‘insult’ should be removed from the Bill altogether. For example, the protection in Clause 11 could be further strengthened by mirroring Section 7(1) of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 stating that ‘For the avoidance of doubt, nothing in section 6(5)<sup>1</sup> prohibits or restricts—(a)discussion or criticism of religions or the beliefs or practices of adherents of religions, (b)expressions of antipathy, dislike, ridicule, insult or abuse towards those matters, (c)proselytising, or (d)urging of adherents of religions to cease practising their religions.’ Adding the protection of ‘expressions of antipathy, dislike, ridicule, insult or abuse towards those matters’ would provide a more comprehensive protection of the right to freedom of expression on matters of religion.

11. Lastly, Clause 11 should be broadened to cover ‘religion or belief’ to ensure that the section provides protection for expressions, either for or against, other belief systems.

12. Similarly, Clause 12 should be strengthened by mirroring section 29JA of the Public Order Act 1986 stating that: ‘1) In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred. 2) In this Part, for the avoidance of doubt, any discussion or criticism of marriage which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred.’

13. Amending the clauses as identified above would give a fuller effect to the protection of freedom of expression for all.

**Question 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?**

14. CARE for Scotland believes that the threshold should be amended to remove ‘insulting’ from its scope. This would help to ensure that the tax payer money is not wasted on vexatious claims (e.g. cases of disagreement of opinion that has nothing

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<sup>1</sup> In relation to threatening communications. See Section 6 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

to do with hate crime). Furthermore, this would provide yet another protection to freedom of speech that is otherwise threatened with censorship.

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

15. Clauses 11 and 12 on protection of freedom of expression are important provisions clarifying what is not covered by hate crime provisions and strengthening the protections of freedom of speech. The provisions could help to prevent hate crime laws being used and abused to censor views and opinions that one does not agree with or are unpopular but otherwise lawful. The protection in Clause 11 could be further strengthened by mirroring Section 7(1) of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 stating that 'For the avoidance of doubt, nothing in section 6(5) prohibits or restricts—(a)discussion or criticism of religions or the beliefs or practices of adherents of religions, (b)expressions of antipathy, dislike, ridicule, insult or abuse towards those matters, (c)proselytising, or (d)urging of adherents of religions to cease practising their religions.' Adding the protection of 'expressions of antipathy, dislike, ridicule, insult or abuse towards those matters' would provide a more comprehensive protection of the right to freedom of expression on matters of religion.

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CARE for Scotland  
24 July 2020