

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM ANNE SANDERSON

Here is my response to your call for views on the proposed Hate Crime and Public Order (Scotland) Bill. The questions you asked which I am answering are numbered appropriately.

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?

Yes, there is a need for this Bill if it does, indeed, consolidate existing hate crime legislation into a coherent whole that will eliminate further piece-meal legislation popping up according to latest developments in society perceptions.

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?

Yes, there is merit in doing that if the definitions of words have such legal clarity as to cover, in principle, all existing, and potentially future aspects of hatred in its many manifestations. 'Hatred' cannot be taken as simply what one or a few individuals perceive to be hatred towards them or their group. There must be a legally clear definition of the word 'hatred' in the first place, upon which all following legislation is based. That will establish a principle that can then be applied to all existing and all potentially future episodes that might be considered to be 'hatred' that is illegal. It must be taken as understood that there remain individual views of hatred against certain things (not people) that are truly and conscientiously offensive to those individuals.

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?

Everything depends on the legal definition of the word "aggravation". I would suggest that "provocation" is a much clearer word, as long as its meaning depends upon proven actions or words that show an individual or group was trying to provoke an individual or group into retaliating illegally against them. The example in the question of "sex hostility" is so vague as to be laughable, were it not so serious. A seriously voiced, or enacted, hatred relating to sex that results in hostility is one thing, but cutting jokes or expressions of ludicrousness may simply be a sincere person's way of getting another person or group to stop and think twice. There must be room for

the latter, but no room for the former. Statutory legislation is going to have to be truly careful to enshrine the right for the latter, whilst clamping down firmly on the former.

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?

Only if the problem, in law, of what age, exactly, was meant, or whether age actually had little to do with any of the alleged offences in question. As I stated in my response of November 2019 to the “Independent Review on Hate Crime Legislation”; [my quote] Consider the farce of age-related hate crime, for it can work both ways; the elderly can show hatred to others or may be demented and lash out due to that, or frustration. Also, young people can have the same conditions as the elderly that cause others to jeer, insult or abuse them. Age has nothing to do with this, for a cut-off age would have to be stated in law for this to make legal sense. ‘Age-related’ is a phrase so devoid of definition it could never work, nor could a cut-off age work either. Age does not come into this – it is attitudes of the haters towards others perceived by them to be inferior to them, or irritating to them, that causes the abuse. Legislation cannot touch the cause of hatred in society; it can only create fear in the general populace who do not speak or act hatefully, impacting on their freedom of speech and to disagree with.... anyone. [my quote ends]

Therefore, my answer to Q4 is, at the moment, “No, with regard to age, but Yes with regard to the vulnerability of the victim.”

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?

Everything depends on the legal definition of the word “sectarianism”. I know what I think sectarianism is, and there are some public marches and sectarian demonstrations which I think should be legally ‘dealt with’, but the trouble is that others might accuse different groups of being ‘sectarian’ when they are not. They could make such charges merely to get revenge on others who are honestly voicing legitimate concern at those ‘others’. This is a can of worms.

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?

With regard to “stirring up hatred re. transgender identity” there must be legal freedom for individuals or groups to use a person’s birth-name and pronoun, as well as to state that “someone who was born female cannot be male” or vice versa. Sexual orientation matters must recognise in law that anyone believing that same-sex marriage is wrong should have the right to express their belief, without fear of prosecution, and that such differences of opinions can be debated openly. With the free speech clause on religion, it must be enlarged to include the right to vigorously debate such matters, either way. Non-religious people must be equally as free to express their disagreement with religion as religious people can be free to express their disagreement with irreligion. Because Church services are not excluded from

Part 2 of the Bill, this would mean that a sermon where Jesus Christ is stated to be “the only Saviour of mankind” (or such-like), or that “non-Christian religions are deceiving mankind as to salvation” (or such-like), or that “homosexual activity is sinful in the view of God” (or such-like), could see the minister of that Church prosecuted for “stirring up hatred.” It goes without saying that all religious leaders of all other religions should have the same freedom to state their genuinely held opinions about different religions. But if any of them should then incite their congregations to go out into the streets and start smashing up property or the people of those other religions, then that clearly violates existing laws and would be incitement to hatred.

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?

Lord Bracadale (in 2018) agreed that the right to free speech should include “expression which shocks, offends and disturbs other people.” He stated that any legislation should make a clear distinction between “rational argument and rabble-rousing” and that “genuine and legitimate criticism could be construed as stirring up hatred”. The last thing he wanted was a “chilling effect on freedom of speech.” I am deeply concerned that Lord’s Bracadale’s stated views are at risk of being by-passed, if not contradicted, in some of this proposed legislation. He was clear that there needs to be a clear distinction between legitimate debate and rabble-rousing. This proposed Bill has not taken those views of his into consideration, in my view.

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

It may be time to change old legal offences about “blasphemy” but – again – the legal definition of the word ‘blasphemy’ must be the foundation for any replacement. But if the old blasphemy laws are to be removed without any replacement, then the question needs to be asked, “Who says there is no such thing as ‘blasphemy’ any more, and why?”

Anne Sanderson
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