

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM PAUL BROWNSEY

Dear Sir/Madam,

This is a response to the invitation at <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/115038.aspx> for members of the public to express to the Justice Committee views on the Hate Crime and Public Order (Scotland) Bill.

I have two observations.

1. Freedom of Expression provisions

The provisions relating to freedom of expression seem to guarantee freedom of expression only in regard to the criticism of religion or of sexual orientation. There is no reason why the same guarantees should not be extended, not just to these two, but in relation to all the relevant characteristics, namely, (a) age, (b) disability, (c) religion or, in the case of a social or cultural group, perceived religious affiliation, (d) sexual orientation, (e) transgender identity, (f) variations in sex characteristics.

2. An approach to the issue of the vagueness and uncertainty of what “stirring up hatred” would amount to

I find the sections about ‘stirring up hatred’ offences troubling in that the language used gives very little indication of the sorts of things that would be forbidden under the proposed legislation. While we may take it for granted that unequivocal incitement to violence is not to be allowed (e.g. a car sticker seen in the USA that read “Kill a queer for Christ”), “stirring up hatred” is much less clear. Indeed, the very word “hatred” is problematic here, since what one person would call “stirring up hatred” may be regarded by another as an attempt to convince others of the iniquity of certain practices or policies. The problem may be illustrated as follows. Some would say, for instance, that the Roman Catholic Church’s teaching that homosexuality is “a more or less strong tendency ordered towards an intrinsic moral evil; and thus...an objective disorder” (Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons, 1986) could be viewed as legitimising hostility towards homosexual people and thus as ‘hate speech’ and as stirring up hatred.

Given that it is desirable that this vagueness and uncertainty should be reduced, even though it may not be possible to eliminate them entirely, I should like to propose the following approach. I should like the Committee to take as its starting-point the following real-life or imaginary examples of controversial assertions and then to frame the legislation in such a way that it was abundantly clear that these examples would not fall foul of the legislation as stirring up hatred:

1. The official view of the Roman Catholic Church, as quoted above, that to be gay is to suffer from an intrinsic disorder towards objective evil.

2. A newspaper article arguing that immigration of people from other cultures or races is ruining our national culture.

3. A website post maintaining that much of what is classified as disability is really just laziness or incompetence.

4. J.K. Rowling's allegedly transphobic Tweet: " 'People who menstruate'. I'm sure there used to be a word for those people. Someone help me out. Wumben? Wimpund? Woomud?"

5. A speech declaring that the elderly are parasites and a drain on society in that they have cornered too much wealth and influence and are destroying the life-chances of young people.

Many people, including myself, would disagree profoundly with some or all of these views, but it seems to me that if the legislation were framed in such a way that it was crystal clear that these expressions of view were not illegal, then anxieties on grounds of freedom of expression would be assuaged to a significant extent.

Yours faithfully,

Paul Brownsey
15 July 2020