

## **JUSTICE COMMITTEE**

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

#### **SUBMISSION FROM J WILLETTS**

Dear Committee

Thank you for welcoming views on this important bill. I look forward to hearing your response and value your careful consideration of the concerns I have raised.

I feel the Bill is particularly dangerous (and though I am hesitant to use such a powerful word I use it deliberately) because it does not include the key legal safeguards contained in parallel legislation in England and Wales. It makes me very apprehensive of how living in Scotland could become.

For instance conduct need not be threatening or intended to stir up hatred for an offence to be committed. Instead, the Bill captures any abusive behaviour likely to stir up hatred. An offence could even be unwittingly committed in the privacy of your own home. Part of this problem is because it doesn't detail what is "threatening or abusive" behaviour.

I feel strongly that there is not enough protection for free speech. This is already problematic and the bill will erode it further. That there is inadequate free speech protection within this bill.

Religion, sexual ethics and transgender issues are often highly contested in public debate, this is healthy for a diverse society. In a free society we should be able to challenge, criticise and otherwise robustly disagree with the beliefs and actions of others, even in ways that might offend them. I think we'd be better off without any stirring up hatred offences in these areas. However, if they are introduced, strong protections for free speech must be included. Police Scotland has warned that it could be "burdened with vexatious reports" if free speech provisions are not included.

No free speech protection covers transgender identity, despite it being a high-profile, contentious issue. I've noted that prominent public figures are already labelled 'transphobic' simply for expressing their belief. Even in private life it is becoming impossible to disagree or want to discuss for further understanding as this is seen as anti whatever (in this case transgender) and this is fundamentally wrong. It cuts across a value that is at the core of our society, namely we are all to be respected and allowed to discuss and hold a view point even if it's different from others, and also to change our thinking after discussion.

Disagreeing with the activist catchphrase "trans women are women" is interpreted as hatred, at every part of community, when this happens - no debate or differing of opinion is allowed when surely this debate and constructive challenge is what free society should be built upon.

Where the Bill does include two clauses to protect freedom of expression on religion (clause 11) and sexual orientation (clause 12) . I feel they must be strengthened.

On religion, the free speech clause protects discussion, criticism, proselytising and urging people to “cease practising their religions”. But a previous offence of stirring up religious hatred had a noticeably stronger safeguard. It specifically protected “expressions of antipathy, dislike, ridicule, insult or abuse” towards religious beliefs or practices.<sup>4</sup> This closely followed the free speech safeguard in the similar law for England and Wales. The Scottish Government has given no justification for watering down this protection. As public servants the Scottish Government must bring healthy discussion and justification to bring understanding.

The sexual orientation free speech clause protects discussion, criticism and urging people “to refrain from or modify” sexual conduct or practices. But the equivalent in England and Wales specifically protects beliefs about same-sex marriage: “any discussion or criticism of marriage which concerns the sex of the parties to marriage”.

There seems no reason to change the law here. Genuinely criminal behaviour in this area can already be prosecuted under the ‘threatening and abusive behaviour’ offence in Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

Using the term abusive within law is wrong as it becomes subjective and could easily be misused. To reiterate, abusive tends to be defined as “offensive”, “rude” or “insulting”, thus making it highly subjective.

Thank you for your careful consideration.

Regards

J Willetts  
17 July 2020