

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM STUART MCKAY

One of the many concerns that I (and others) have is that the '*new offence*' will be too easy to commit. The lowest threshold is *abusive* behaviour *likely* to stir up hatred. Under **Westminster** legislation there has to be the **intent**. It would be too easy for an individual to *unwittingly* cause the offence...and that without meaning to! Not only could the individual not realise that their behaviour is either abusive or likely to '*stir up hatred*', they have no way of knowing that someone who either overhears their comments or listens to them may take them in a certain way to act with threat and hatred. There has to be a '**mental recognition**' of the effects of one's words; therefore, '**intent**' has to be a part of this offence, not just merely '**likely**'. To treat this legislation as a '**strict liability offence**' is dangerous - there must be some awareness by the speaker of how the behaviour or speech might be understood. Furthermore, the offence can even be committed in the privacy of your own home - existing provisions include the defence of showing you had no reason to believe your behaviour would be witnessed by someone outside a dwelling - but this defence will be stripped away by the proposed new legislation.

A clear, major concern, as clearly indicated throughout this response, is the **inadequate protection of Free Speech**. In a free society we should be able to challenge, criticise and disagree robustly, even vehemently, with the beliefs and actions of others - many individuals disagree with my personal views, and I am alright with that, but under the proposed legislation if I were to state a personal opinion, view or belief, and, then, someone was to disagree with me, it is feasible and possible for me to claim their being guilty of a hate crime against my personal views/beliefs. I assure you - that is wrong, and it would be equally wrong for me to be charged for stating precious-held opinions/beliefs.

This matter is worse when it comes to *the highly contentious issue of Transgender Identity* where there is **no Free Speech clause included!** it is short-sighted, reckless and irresponsible not to include *Free Speech protections*. Such protective provisions should fundamentally underpin the right to disagree with Transgender Ideology; also, there should be the right to refer to a persons birth name and pronoun. Most folks in society are willing to consider the wishes of others pertaining to themselves. However, to include it in legislation is to introduce '*compelled speech*'.

Whilst it may be argued there are *Free Speech clauses included - these do not go far enough!*

Religion: The proposed protections would include '*discussion, criticism, proselytising*', and urge people to '*cease practising their religions*'. However, previous safeguards were stronger, and went further by protecting, "*expressions of antipathy, dislike, ridicule, insult or abuse*" towards religious beliefs or practices. I have no issue with this which should be regarded in the light of my being a lay-preacher.

Sexual Orientation: Again, the protections would include '*discussion, criticism*', and urging people "*to refrain from or modify*" *sexual practices*; the equivalent in **England**

and Wales protects beliefs about same-sex marriage: "*any discussion or criticism of marriage which concerns the sex of the parties to marriage*".

Having dealt with the main points of my submission, I would make some briefer points, though I hold, no less salient. I apologise for any repetition.

It has to be understood, and accepted, that *religious beliefs*, and *views on morality* - no matter how strongly held they are - these are matters of subjectivity; folks can have vigorous debate, and change their minds - a free society must protect this. The matters of **race and gender** are *immutable facts* (notwithstanding the Transgender Ideology).

Religious and atheistic individuals could well have their freedom of religion and belief threatened, and may feel that they cannot give an account of those things which they believe, or don't. The very thought of prosecution could cause many to keep quiet; though subtle, it is an insidiously dangerous way to threaten freedom of speech, and the very fabric of a free society. Furthermore, **church/religious services** are not excluded - the preacher/speaker could find themselves prosecuted for stating their sincerely-held beliefs, which might even be exclusionary. The '*Religious Free Speech*' clause has to be much stronger - mere discussion or criticism does not come anywhere near the mark. Individuals must not only *be* free to vigorously challenge the religious beliefs of others - they must *feel* free to do so. Likewise, the '*Free Speech*' clause on **sexual orientation** must be robust so that beliefs about '*same-sex marriage*' are explicitly covered. In the same way, regarding '**Transgender Identity**', freedom to use a person's birth name and pronoun, and to say that a person born a woman cannot be a man, and vice-versa.

Any new '*stirring-up hatred*' offences should be where there is **actual threatening conduct**, and not include the more subjective '*abusive*' behaviour. Also, any such offence should only cover conduct which '**deliberately intends**' to stir up hatred. Being '*likely*' neither means the individual was aware that it would, or intended for it to do so. It is no light thing to accuse someone of '*stirring-up hatred*', and it needs to be clear this was deliberate. This is a most serious matter.

Unreasonable individuals will very easily use such insecure legislation to silence their detractors. When others disagree with their views, beliefs, or philosophies, if they cannot '*win the argument/debate*', they will resort to use of the legislation to accuse their opponents of '*hatred*'. Others who may be politically motivated could also use this proposed legislation to silence their opponents. Even **Police Scotland** have expressed their concern that there needs to be strong free speech clauses to prevent an influx of unsubstantiated or vexatious accusations/reports. This could waste a lot of '*police hours*' unnecessarily.

Concluding where I started: **Lord Bracadale's Independent Review** on *Hate Crime* report, led to the **Scottish Government's Bill**. He stressed the need for a clear distinction between legitimate debate and rabble-rousing - the Bill does not come anywhere near the mark of reflecting this.

Regards,

Stuart McKay

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