

BACKGROUND PAPER ON THE POTENTIAL FOR DEFINING THE TERM “SECTARIANISM” IN SCOTS LAW

Introduction

1. The Scottish Government is committed to tackling sectarianism. The need to clearly define the term “sectarianism” both for general use and to provide a legal definition that could be used in Scots Law has been raised on numerous occasions.

2. There have been various considerations of the pros and cons of doing this but, to date, no definitive conclusion has been reached. The issue has once again been raised through the evidence gathering sessions that have been held by the Scottish Parliament’s Justice Committee while considering the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill. In particular, the Committee has heard from a range of sources that there is a need to establish a legal definition of the term sectarianism to aid application of the law by police and prosecutors.

Aims

3. The aim of this paper is to provide a basis for discussions which will consider the following questions:

- Is possible to define the term sectarianism in Scots law?
- If it is not possible, what are the reasons for this?
- If it is possible:
 - What are the advantages and disadvantages of this?
 - Should the definition be limited intra-Christian sectarianism or should it be broadened out to include all forms of sectarianism?
 - What could the specific wording of a legal definition be?

4. The ultimate aim is to have a clear view on whether or not the Scottish Government should pursue the idea of defining sectarianism in Scots Law and to provide strong evidence to support this position.

Background

5. The Scottish Government policy on tackling sectarianism has to date focussed on intra-Christian sectarianism, but the term sectarianism is used by the media in a number of contexts to describe the tensions, philosophical disagreements and violence that exists between different religious denominations and among different sects within individual denominations. For example, the term sectarianism is regularly used to describe the tensions that exist between the Suni and Shia communities within the Muslim faith.

6. One of the aims set out at paragraph 3 is to consider whether such forms of sectarianism should be included in a legal definition of sectarianism, however, before considering that it is worth reminding ourselves how the term sectarianism is currently used in relation to the Scottish Government policy in this area and why intra-Christian sectarianism is still a living issue in Scotland that needs to be addressed.

7. Historically in Scotland people had a very particular understanding of what sectarianism referred to, in essence that was tensions between the majority Protestant (or Reformed) community and the minority Catholic community which has often been referred to as intra-Christian sectarianism. This form of sectarianism existed in Scotland long before Scotland could realistically be described ethnically or religiously diverse.

8. The term intra-Christian has also been applied more broadly to include, for example, tensions that exist between the Church of Scotland, the largest Protestant Church in Scotland, and the Free Church of Scotland. There is a history of tensions existing between the two despite the fact that both are Protestant churches.

9. The roots of sectarianism in Scotland are complex and go back many hundreds of years. While this is not intended to be a history paper, it is important to acknowledge that events of relatively modern times in Ireland continue to have a significant impact in Scotland. The extreme views and ideologies which have been a part of the political and social landscape of Northern Ireland since its partition from the rest of Ireland in 1921, and which in more recent times (the period defined as the Troubles – 1968-1998) led to over 3,600 people being killed and thousands more injured in what is usually described as sectarian violence, continue to resonate in Scotland.

10. There remains a deep schism in Northern Ireland between the Loyalist (predominantly Protestant and the majority community) and Irish Republican (predominantly Catholic and the minority community) factions which has seen its most serious manifestations in Northern Ireland, but which has never been completely confined to Northern Ireland. Social and cultural links between Scotland and Northern Ireland have always been strong, and in the 2011 Census 54,000 people in Scotland (1% of the population) described themselves as being ethnically Irish (white/Irish which includes both Northern Ireland and the Republic of Ireland).

11. It is likely that most people who describe themselves as ethnically Irish do so because their parents, grandparents or even great-grandparents were born in Ireland even if they have never lived there themselves. But it is important to note that many people who are descended from those born in Ireland may prefer to describe themselves as ethnically British (white/British) without claiming any direct Irish ethnicity.

12. It is therefore impossible to say with any confidence how many people in Scotland are of Irish decent, or have a direct link to Ireland. Membership of organisations or groups which experience sectarianism, and direct support or sympathy for Loyalist or Irish Republican narratives are not confined to descendants of Ireland. In some cases, such as views expressed by young people, purported support for sectarian terrorist organisations (such as the Ulster Volunteer Force (UVF) or the Irish Republican Army (IRA)) could simply stem from a source such as supporting a football team and the need to be seen to be engaged with, and part of, the culture perceived to be surrounding that team.

13. While Scotland has managed to avoid the high levels of violence caused by sectarian ideologies in Northern Ireland, it has not been exempt from it either. There have thankfully been few sectarian murders in Scotland, but through such acts of violence we can see the links between Northern Ireland and Scotland.

14. For example, 16 year old Mark Scott was murdered on 7 October 1995 by Jason Campbell for wearing a Celtic scarf while walking through Bridgeton area of Glasgow on his way home. Mr Campbell, then 21 years old, was brought up strongly Loyalist. Mr Campbell requested a transfer to Belfast's Maze Prison under the pretence of being a political prisoner – the transfer was denied.

15. In 2017, following the UK Government election, the Conservative Prime Minister reached an agreement with the Democratic Unionist Party (DUP) MPs all of whom represent Northern Ireland constituencies. This agreement (referred to as a “supply and confidence” agreement) ensured that the DUP would support the UK Government on a number of policies, including Brexit (which the majority of the electorate in Northern Ireland voted against), but also caused a serious rift between the DUP and Sinn Fein with the latter feeling that the carefully balanced power sharing between the two which had been established through the Good Friday Agreement had been abandoned by placing the DUP in a position of unprecedented power and influence. The Northern Ireland Assembly has not functioned since and there is probably little chance of it sitting in the near future.

16. This has a knock on effect in Scotland. Sectarianism therefore remains a real problem in Scotland and continues to impact negatively on the lives of many people in many communities across the country. We can say that events in, and related to, Northern Ireland still have a direct impact on both the political and ideological positions taken by those in Scotland who are aligned to Loyalism and Irish Republicanism, as well as community relations in Scotland.

17. A 2015 Scottish Government commissioned study into public attitudes to sectarianism in Scotland found that football was the most commonly mentioned factor people believe contributes to sectarianism (88% think it contributes; 55% think it's the main factor) and Loyalist marches and parades the second most commonly mentioned factor (79% mentioning it and 13% felt it was the main factor). Irish Republican marches (although much less numerous) were also considered a factor with 70% mentioning it and 3% thinking it was the main factor.

18. Football-related sectarianism has proven to be a very difficult issue to address. Work at grassroots level has definitely had a positive impact, but this has been carried

out on a small scale and primarily with school-age children. The introduction of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 aimed to stamp out offensive singing and chanting (including sectarian, racist and homophobic abuse) at football, but the Act has been dogged from the outset by claims of heavy handedness and infringement on freedom of speech, as well as active campaigns to have the Act repealed. A repeal Bill is currently going through parliament and, despite opposition from a number of bodies representing minority communities, it is likely that the Act will be repealed in its entirety in 2018.

19. The independent Advisory Group on Tackling Sectarianism in Scotland stated that football provided a “permissive environment” for sectarian and other offensive behaviour, or to put it another way, football stadia are areas where people can blatantly express offensive language, insults and attack other communities without fear of retribution. Part of this permissiveness is the ability to sing songs and chant slogans which can be racist and among other things, promote terrorist organisations (such as the UVF or IRA) and celebrate acts carried out by these organisations including the loss of life. Such behaviour fans the flames of sectarianism language used in such contexts also carries over into day-to-day life and therefore increases the low level sectarianism that communities experience.

20. Membership of the various Loyal institutions has been consistently claimed by them to be at around 50,000 in Scotland. Loyalist marches account for a significant proportion of all the marches and parades taking place in Scotland in any given year, and the majority of these are held in Glasgow and the west coast areas. There are far fewer Irish Republican marches in Scotland each year and these also tend to be smaller in scale than Loyalist marches.

21. Figures for 2012 indicate that about 34% of all marches that took place in Scotland were Loyalist while only about 2% were Irish Republican. Loyalist marches, particularly those in Glasgow and the West, also attract spectators while Irish Republican marches discourage this and try to encourage those interested to participate in the march.

22. Public opinion often shows strong opposition to such marches and parades, but there are two important elements to this. The first is that while people often object to Loyalist and Irish Republican marches, they rarely object to community parades and gala days which are considered more benign. This clearly demonstrates that what people are objecting to is the type of march rather than marching and parading in and of itself. The second is that human rights of individuals and groups ensure the right to public assembly and celebration of culture.

23. There is a statutory process for notifying local authorities (the lead statutory agency) and Police Scotland about such events, and the negative public perception of marches does not correlate with the findings on marches and parades made in a Scottish Government commissioned independent Report on Marches, Parades and Static Demonstrations in Scotland, carried out by Dr Michael Rosie, University of Edinburgh, was published in October 2017. Dr Rosie found that, for the most part, marches and parades were generally characterised by the professional approach taken by the three key parties involved (the parading organisation, the local authority,

and Police Scotland) with the vast majority well-organised and passing off in a peaceful and orderly fashion.

24. Police Scotland has reported that the bands which participate in these events regularly play the tunes of offensive songs (such as the Billy Boys which includes the line “up to our knees in Fenian blood”). This is most common on Loyalist marches, and where there are spectators playing these tunes can encourage them to sing along.

25. The annual Battle of the Boyne commemorations which took place Saturday 1 July 2017 in Glasgow attracted around 4,500 participants (people on the march), another 4,500 spectators (“hangers-on”, many of whom will have followed the march along the streets of Glasgow) with 60 flute bands participating. Police Scotland reported more trouble than normal at the event and the Sunday Herald reported that it was “the unexpected General Election result and the deal between the Tories and the hardline DUP, that seemed upper most in the minds of Orangemen yesterday. Keeping their hangers-on in line, wasn't as important as triumphalism.” The last comment is misleading as the Orange Order has repeatedly said that they will take no responsibility whatsoever for “hangers-on”. The Sunday Herald also reported that participants “seemed to have a spring in their step. They swaggered to Glasgow Green with renewed purpose”, and that “triumphalist” speeches were made.

26. Political speeches began at Glasgow Green under “Orangefest” banners. Depute County Grand Master Brother Stephen Brown warned that “Republican sympathisers like Jeremy Corbyn and his cohorts continue to plot and scheme”. Referring to the general election he stated “What a kicking the SNP got.....As far as the Orange Order is concerned, it could not have been a better outcome. Nicola’s immediate plans for an independence referendum are all but shot to pieces and the sudden rise in stature of the DUP can only be good for Northern Ireland and, inevitably, for unionism and loyalism.....From an Orange perspective, we can benefit from a situation where our Orange voice can be heard in the highest of courts. Sisters and brethren, the future is most definitely Orange.”

27. The guest speaker, Brother Reverend Mervyn Gibson, Grand Secretary of the Grand Orange Lodge of Ireland, congratulated members who were “elected to public office as councillors and other who do not hide their support for the Orange institution”. He condemned charities who refuse donations from the Orange Order as “sectarian bigots”. He ended by referring to the SNP saying “To defeat their ambition to break up the United Kingdom we need to work together, supporting one another as you supported us during the Troubles.”

28. The rhetoric and tone in these speeches is definitely stronger than in previous years. It is also likely that this will continue into 2018 as the agreement between the Conservatives and DUP remains in place. Indeed, even if the agreement is dropped it will take considerable time and effort to re-establish the Northern Ireland Assembly as the trust which had been built, and which led to power sharing between the DUP and Sinn Fein, has been lost and needs to be rebuilt before the Assembly can function properly. While not directly affected, a fallout from all of this is felt in Scottish communities.

Conclusion

29. Although we would not suggest that sectarianism between Northern Ireland and Scotland is entirely a one-way street, we need to understand that the negative impact of sectarianism is felt at many levels within Scottish society, including individuals being made to feel unwelcome in their communities; communities feeling their identity is being belittled, undermined or ignored; and violence based on sectarian tribalism.

30. There is a historic basis for considering intra-Christian sectarianism as a form of sectarianism that requires a specific focus from the Scottish Government and a policy responding to it which is separate from the other forms of sectarianism that exist. However, while this has happened over a number of years, this does not mean that such a specific focus should continue into the future.

31. Defining sectarianism within Scots Law has the potential to assist and support the prosecution process, but may also have a broader benefit in helping communities themselves understand when they are being discriminated against on sectarian grounds and when it can be reported to the police. There is no quick fix or single activity to address sectarianism in Scotland, and consideration on drafting a legal definition is clearly about supporting a wider agenda rather than the definition being a magical cure for sectarianism in and of itself.

Establishing a definition

32. The main work undertaken in relation to establishing a definition was undertaken by the independent Advisory Group on Tackling Sectarianism in Scotland. In their first report of April 2015 – “Tackling Sectarianism and its Consequences in Scotland” – the Advisory Group included the following working definition:

“Sectarianism in Scotland is a mixture of perceptions, attitudes, actions, and structures that involves overlooking, excluding, discriminating against or being abusive or violent towards others on the basis of their perceived Christian denominational background. This perception is always mixed with other factors such as, but not confined to, politics, football allegiance and national identity.”

33. This was designed as an attempt to capture all of the elements of sectarianism and it was always recognised that this was a complex and academic definition which would be difficult to translate into law.

34. Additionally, this was a working definition which was used as the basis for testing the usefulness of a definition through a range of grass-roots projects aimed at tackling sectarianism in different communities.

Testing the Definition

35. YouthLink Scotland has been testing the definition through the Action on Sectarianism (AoS) website and their various social media accounts. They have asked partners, other funded projects and users of the website to provide them with feedback on what they like/don't like about the definition and if any improvements can be made.

36. Although there were many positive responses from those who were happy with the definition as it stands, we have focussed on the responses from those who have suggested amendments as these will be most helpful in looking at how the definition could be improved to achieve a legal definition.

37. Below we have compiled the main constructive examples of how the respondents feel the definition could be improved:

Constructive Feedback

- It is not always linked to the other factors listed, sectarianism can exist without reference to politics, football or nationality. This is just a myth perpetuated to keep journalists in jobs and charities funded.
- Easily understandable, but far too wide reaching to make any sense.
- Too much jargon – how can something 'always include' but then not be 'confined to'? – should it not also say 'actual' denomination as well as 'perceived'? – people may be abusive due to a person's actual denomination
- Your average person will be confused by what is meant by 'structures' in this context – if you use a word in a definition that needs defined further it will not be clear – academics or sociologists may understand this.
- The definition of sectarianism is significantly over complicated and convoluted. If its anti-Catholic – call it that. If it is Islamophobic call it that. If it is anti-protestant call it that.
- Very relevant as all factors mentioned are factors that continuously come up in discourse. However, it is my belief that more emphasis needs to be placed on identity.
- I think it is missing the anti-Irish racism element. It doesn't mention Ireland at all in the whole definition despite this being central to the whole issue.
- The definition ignored the historical roots of sectarianism – the issue stems from racism/xenophobia as a result of Irish immigration and the hostile reception Irish people experienced for decades in Scotland.
- We think that the first sentence is too long therefore would suggest amending it to the following: Sectarianism in Scotland is a form of bigotry, discrimination or hatred towards others on the basis of their perceived Christian denominational background. This is underpinned by a mixture of perceptions, attitudes, actions, and social structures that can lead to negative interactions toward/with the targeted party. These interactions are linked, but not confined to, politics, football allegiance and national identity.
- There doesn't appear to be a definition. A mixture of elements doesn't really help the definition mean anything. Is perception alone sectarianism? Is

attitude alone sectarianism? Are actions alone sectarianism? At what point does it become sectarianism? Why limited to Christianity? While generally speaking this is the most obvious, it also singles out this sort of sectarianism as opposed to that against Muslims or Jewish or all of the others who get ignorance used against them. This then gives the impression that certain groups of people are being singled out and attacked by the definition. Since the whole idea is to reduce if not completely get rid of sectarianism I do not see how this will achieve that and could have the opposite effect.

What is missing?

- Support for terrorist groups.
- Anti Irish racism.
- Don't single out anyone (i.e. Christianity). Focus more on the discrimination aspects of sectarianism, which is what it is. Make it basic with a break down. e.g. – Sectarianism is discrimination against a group or individual for what they are perceived to believe in. This includes; religious belief, political belief, football allegiances, national identity, etc. If felt needed, a breakdown of discrimination would also be beneficial.
- Understanding the root of sectarianism starting from birth in the home and throughout their life.
- Organised segregation of groups based on religion (practicing or perceived).
- Race /creed.
- I believe it should focus on discrimination and violence.
- The definition ignored the historical roots of sectarianism – the issue stems from racism/xenophobia as a result of Irish immigration and the hostile reception Irish people experienced for decades in Scotland.

Conclusion

38. There is no clear view on what a definition of sectarianism should include and therefore it is entirely open to the group to use the information in this minute, and any further evidence that is brought to the attention of the group, in whatever way they see fit to answer the questions set out in paragraph 3.