



The Independent Voice

Cllr Andy Doig

Johnstone North, Kilbarchan, Howwood, and Lochwinnoch



Renfrewshire Council
Cotton Street
Paisley
Renfrewshire

Wednesday 7th July 2020

Response to Publication of Consultation on Hate Crime and Public Order (Scotland) Bill from Cllr Andy Doig

Dear Humza,

I hope this letter finds you and your family well regarding the current restrictions. Prior to outlining my views on the Hate Crime and Public Order (Scotland) Bill I would like to elaborate on my personal history of 38yrs in the SNP fighting racism. I have also sent this to the Justice Committee as my official submission to the consultation.

In 1986 I was a founder member of SNP Anti-Apartheid, along with the late Dr Allan McCartney and a handful of others. At the 1987 Westminster elections I stood for the SNP in the Glasgow Pollok constituency and was, to my knowledge, the first SNP Parliamentary Candidate to translate campaign material into Urdu and Hindi. At the 1987 SNP Conference I moved a motion committing the SNP to the establishment of "A Scottish Ethnic Minorities Research Unit" to work with and identify the needs of the Asian and Black communities. And during the 1989 Govan by-election I officially advised Jim Sillars on working with the Asian community in Govan.

I am certain my particular distaste for racism comes from the fact that my family were jazz musicians, and I heard all the classic jazz singers every week at home from a very young age. Before the age of 12 yrs I knew that when Billie Holliday was singing "Strange Fruit", it was a polemic in song against racism. So I abhor racism, sectarianism, and bigotry of any kind, and should have been able to welcome the Hate Crime and Public Order Bill with open arms but I regret to say this is far from the case.

Firstly, I have to ask if it is required and if current laws are not sufficient. In 2012 as a newly elected Councillor I was approached by a Lesbian constituent of mine who was suffering continual and persistent verbal harassment in the street of a homophobic nature. I duly informed the Police Diversity Unit and she was interviewed, and in due course the culprit was taken to court and found guilty and the harassment ended. I cannot see how the Hate Crime Bill can improve on that result.

Whilst the Bill is undoubtedly well intentioned it is fundamentally flawed in a number of ways. For example, Part 1(4) states "Evidence from a single source

is sufficient to prove that an offence is aggravated by prejudice". This is a blackmailer's charter as without any secondary source of evidence any individual with a grievance, real or imagined, could alone endanger the reputation of any individual.

Part 2 (3 ii) refers to "threatening, abusive or insulting" material. These are not clearly defined therefore are only subjective terms which cannot be evaluated in law. There is a world of difference between consistent and hateful public abuse of the kind my Lesbian constituent suffered in 2012 and someone who feels objectively offended but the Bill makes no distinction between the two. People rightly have to be protected from hate but no one has the right not to be offended.

Part 2.2 (b ii) refers to "it is likely that hatred will be stirred up", but how on earth do you define "likely" on a scale of not likely to very probable, these terms will simply not stand up in a court of law. Part 2.4 (1) actually brings back state censorship of a kind that was abolished in the UK in 1968 and this is an appalling authoritarian measure that could actually lead to treasured Scots cultural occasions, such as Burns Suppers, falling foul of the law should one solitary individual take offence at, for example, the reading of some of the Bard's more ribald works such as "Nine Inch Will Please a Lady".

The only way to prevent incidents such as this happening would be for the Bill to include a clause which explicitly states that satire is protected speech, which is the law in other jurisdictions such as the United States and Germany. As no such clause is alluded to in the Bill this is a tremendous opportunity lost to delineate the boundaries of creative art from hate and bigotry.

Part 11 (2) states that "Behaviour or material is not to be taken to be threatening or abusive solely on the basis that it involves or included religions or religious beliefs. Given that many religious sacred texts were written in a far different cultural ethos than we live in currently this is a paper thin protection of religious rights to say the least.

The practice of faith can only be judged to be fair if the primary objective is to explain and proselytise any given religion, rather than to use theological texts in such a way as to justify hatred of certain groups, but no such distinction is made in the Bill. Part 11 (2) should include an Exegetical Exemption for religious and faith groups which would safeguard their right to interpret sacred texts in the context of historical exegesis as it is known particularly in the Abrahamic religions, that is Christianity, Islam, and Judaism. Exegesis comes from the Greek word "To interpret", and applying critical examination to sacred texts would make clear that religions and faith groups have a responsibility to explore the context of texts in full, and not just literally.

For example, it is clear under the proposed bill that a Christian Minister or Priest who preached on the notorious Book of Leviticus, Chapter 18, which clearly prohibits male homosexuality, could fall foul of the law. However, an Exegetical Exemption which builds on the best examples of textual criticism across all faiths, would make clear that Leviticus 18 was a creature of its time and in fact was an injunction against male temple prostitution rather than same sex relationships per se. The lack of an Exegetical Exemption for religious and faith groups is a considerable weakness in the Bill.

The vagueness of the Bill is a major deficiency in its composition which will cause it to run aground much as did the Offensive Behaviour at Football Act when it got into the courtroom. Added to that fatal vagueness is more than a hint of authoritarianism which is a disgrace to the SNP Government, and a betrayal of the Party's historic commitment to freedom of speech. Unless there is radical revision of the kind I suggested then I urge the Government to scrap the Hate Crime and Public Order Bill forthwith.

Yours Sincerely,

Cllr Andy Doig,
(Independent),
Johnstone North, Kilbarchan, Howwood, and Lochwinnoch Ward,
Renfrewshire Council.



The Scottish Parliament
Pàrlamaid na h-Alba

Liam Kerr MSP
Member of the Scottish Parliament for North East Scotland Region

The First Minister
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

Dear First Minister

Vulnerability Aggravator

Today (24th June 2020) at First Minister's Questions, in an answer to Bruce Crawford MSP, you said:

"anybody who perpetrates a scam on a vulnerable person is at any time...the lowest of the low. It is just behaviour that is disgraceful, disgusting, and those who indulge in it should be deeply and utterly ashamed of themselves".

I could not agree more with your sentiments.

You also said you would look again at whether there is further action to take on this issue.

In 2018, Lord Bracadale recommended in his report on the Independent Review of Hate Crime that:

"The Scottish Government should consider the introduction, outwith the hate crime scheme, of a general aggravation covering exploitation and vulnerability."

Over two years later, there is no sign of such an aggravator being introduced by the Scottish Government. The Government's Policy Memorandum for the recently introduced Hate Crime and Public Order (Scotland) Bill merely states that:

"In the longer term, the Scottish Government will consider whether there should be reforms to the criminal law to improve the protection available to people who may be at increased risk of becoming victims of crime because of their vulnerability".

80 Rosemount Place, Aberdeen, AB25 2XN
Liam.Kerr.MSP@Parliament.scot
Tel: 01224 539577



LiamKerrMSP



@LiamKerrMSP

This is not good enough. Vulnerable people are being targeted now during this pandemic. The Scottish Conservatives are clear that criminals who target people because they are vulnerable - for instance due to being elderly or disabled - should be punished more severely by the courts.

I write to enquire whether you will commit to introduce such an aggravator before the end of this Parliamentary term.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Liam Kerr', with a horizontal line extending to the right.

Liam Kerr MSP

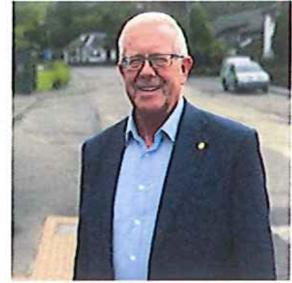
Member of the Scottish Parliament for the North East Scotland Region



The Scottish Parliament
Pàrlamaid na h-Alba

6 May 2020

Mr Humza Yousaf MSP
Cabinet Secretary for Justice
Scottish Government
St. Andrews House
Regent Road
Edinburgh
EH1 3DG



Our Ref: BC1881

Dear Cabinet Secretary,

Hate Crime and Public Order (Scotland) Bill

I am writing to you on behalf of a constituent who recently contacted me to give his views on a piece of legislation currently before the Scottish Parliament. I have copied my constituents' comments below for your consideration;

"I have concerns over the proposed hate speech legislation which has recently been introduced to the Scottish parliament. My self and many others primary concern with the proposed bill lie with the extremely vague term of "stirring up" hatred.

This essentially implies that any perfectly harmless and legitimate criticism of one of the protected groups mentioned in the proposed legislation could result in criminal prosecution and a lengthily jail sentence of the individual involved.

I believe this bill, if passed into law will not only be a gross infringement of people's right to freedom of speech and expression but will no doubt be used to silence peoples perfectly legitimate concerns."

I would therefore be grateful for any response you are able to offer my constituent regarding these comments.

I thank you for your attention to this matter and I look forward to your response.

Kind regards

Bruce Crawford (SNP) MSP for Stirling constituency
Office 16, STEP, Stirling, FK7 7RP
Telephone 01786 471899
Email: bruce.crawford.msp@parliament.scot

Stirling Constituency covers: Aberfoyle, Arnprior, Ardeonaig, Balfron, Balquhidder, Bannockburn, Blanefield, Brig O'Turk, Buchlyvie, Balmaha, Callander, Cambusbarron, Cowie, Crianlarich, Croftamie, Deanston, Doune, Drymen, Fallin, Fintry, Gargunnoch, Gartmore, Inversnaid, Killearn, Killin, Kinlochard, Kippen, Lochearnhead, Milton of Buchanan, Plean, Port of Menteith, Rowardennan, Stirling, Strathblane, Strathyre, Stronachlachar, Thornhill, Throsk, Tyndrum.

Bruce Crawford MSP

Brendan O'Hara MP
Argyll and Bute



HOUSE OF COMMONS

LONDON SW1A 0AA

Mr Humza Yousaf MSP
Cabinet Secretary for Justice
Justice
Scottish Government, St. Andrews House
Regent Road
Edinburgh
EH1 3DG

20 August 2020

FS Case Ref:BO7732

Dear Humza,

I have been approached by a constituent who has concerns about the Hate Crime Bill and has written as follows, my original response to my constituent's correspondence is also included and I would be grateful for your advice that I may respond.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brendan O'Hara'.

Brendan O'Hara MP
Argyll and Bute

'Thank you so much for getting back to me, and writing such a detailed and comprehensive reply. It is much appreciated.

I still have concerns regarding the Hate crime and public order (Scotland) Bill
I would like to use some current examples to explain further why I am deeply concerned about this bill.

I followed with interest the recent JK Rowling debate, where she stated that women were "people who menstruate". I read a response from a member of the transgender community, who said "this is hate".

The bill includes conviction for single offences and every part of a person's public and private life can be scrutinised for evidence. I do think with this bill freedom will become more expensive and less attainable as more accusations may arise based on individual opinions and interpretation of the law rather than an actual rise in hate crime. I am also concerned that the subjectivity of, or definition of what is hate, what is malice is changing, as a society and this will effect how the bill is interpreted in the future.

Some call it "political correctness gone mad" but the bill does not give, in my opinion, clear enough framework or guidelines as to what is or isn't acceptable and this makes me oppose it. The bill as you inform me, uses the European Convention human rights regulations, but what will happen when we leave the EU? It just all seems so complicated and an endless rabbit trail to try and get to the truth of what will happen following legislation.

In a bill like this which is designed to help victims of hate crime speak out, and help bring conviction of criminals..... It is too easy for someone who is angry and has an agenda, to spy on, or bring a case against someone, based on their own hypersensitivity to what is actually hate, and their own opposition to having a public debate about sensitive issues.

8 Colquhoun Square
Helensburgh, G84 8AD
Telephone: 01436 670 587
Email: brendan.ohara.mp@parliament.uk

It is terrible that bullying is so high against the transgender community, and I have utmost compassion for these people, but as a parent, I do not want to be forced into silence when I have questions about how to handle what are huge and rapid changes in the structure of our society and its legislation surrounding the gender debate.

Other examples of political correctness gone mad, for example "Miss swimsuit UK", being stripped of her title because she posted on her private Facebook page that "all lives matter". I had no idea, that this was a controversial thing to say, all lives do matter, and I had no idea that this was seen to be insulting to the BlackLivesMatter movement. Again my concern is what is hate? What is insulting? I am concerned that we are raising a generation, who are so paranoid about not offending anyone, that they feel unable to express themselves.

I am concerned about part two subsection nine of the bill, individual culpability where an organisation commits an offence. The bill cites "neglect on the part of a responsible individual". Again, this puts every day people at risk, as neglect could be caused by a number of reasons, in this hypersensitive culture, where anything from our social media accounts, to private conversations, come under the legislation of this bill.....and where offence is "in the eye of the beholder".....are everyday people who turn a blind eye to office politics, simply to get a tough job done, going to be made vulnerable to accusation? I believe that the bill is written in such a sweeping generalising way, that innocent people could be criminalised.

I also think that it is unfair to expect the police in the current state to apply this bill and to be the ones who decide what is hate, what is insulting, what is feasibly and realistically stirring up hate. Each of those police men or women or people, will have individual characteristics that give them, regardless of their training some degree of preference or prejudice, and life experience, which makes quick decision making under pressure and effectively implementing this complicated bill difficult. I believe having seen the recent riots, the pressure on our police is already immense. Weighing up evidence to bring a conviction is complicated, because it is subjective as an offended person brings the accusation through their own unique perspective. Would there be a better way of applying the rules? Do the police have the time for this? Would the police respond to someone who bombarding them with an agenda or repeated accusations insisting that they are a victim? Would it stop them from doing their job in other areas?

If the Police are forced to investigate each and every claim, what if a multitude of false claims could come in? Do they have the resources to investigate each and everyone? And so therefore, the victim of domestic abuse, trolling, bullying etc who is traumatised, living in an unsafe environment, and struggles to get in touch, will they be given precedence, or put in a backlog of complaints?

The police have raised their concerns publicly about the bill. I would like to see more collaboration with the police before the bill is implemented.

I believe the words "ill will", "it is likely [to stir up hatred]" and "insulting" are too vague.

Regarding part 2 subsection 4;- "Culpability during a public performance of a play".

To quote Thomas Aquinas a 12th century Italian;- "We most love them both, those whose opinions we share, and those whose opinions we reject. For both have laboured in the search for truth, and both have helped us in finding it".

I am very concerned that both the writers and performers of plays will now be vulnerable to the accusation of stirring up hatred, by presenting insulting material.

This is because in this bill, the offended person, a member of the public, brings the accusation, rather than an independent, unbiased trained person, assessing a production.

If someone in theatre was to seek legal advice, surely they would be advised on the side of caution to make sure that both the partakers in the play, and the writer are both protected. Again this brings a culture, of caution and "if in doubt don't do it", rather than a culture that allows the ugliness of a crime, or bigotry, or bullying, oppression, to be shown on stage for what it is. For characters to be correctly depicted and historical events accurately portrayed, or even with artistic license for the very sake of "stirring up" could easily be said to be stirring up hate against individuals. I am very concerned that even the inclusion of part 2 clause 4 is an infringement on freedom of expression.

Similarly, part 2 subsection 6, the possession of hate material is now subject to search warrant, and the accusation that it could "potentially" stir up hatred. I am very concerned that for example, journalists who

intend to present the views of both sides on a contentious issue could be accused of possessing hate base material, such as interviews with individuals who are racist, to share their views and opinions in an article, could be accused of stirring up hatred. This is too vague and subjective, and could lead to a heavy-handed censoring of the press, researchers, and university lecturers. Those with an agenda against that person or newspaper, could bring an accusation. I don't think this part of the legislation in its current form is workable. Again, the accusation that an individual as part of an organisation can be accused, or charged, makes life more complicated and challenging for those working for such organisations as newspapers, any media, universities.

New legislation seems to be coming in frequently following the coronavirus outbreak. With the onset of DIY abortions at home, during the lockdown (which was enforced in Northern Ireland against the will of that nation's own government), I have read the following:

Women have died. Allegedly, according to "leaked NHS emails" 2 UK women, one at home and one from septicaemia died following a diy abortion in 2020. (Reports from 2006/7 suggest previous allegations of death using this DIY abortion method, 8-11 in total. I'm struggling to verify facts on this latter statement, just finding historical newspaper article summaries).

Women have not been offered any counselling or support, whilst having a DIY abortion, this was expressed by a victim of domestic abuse who was "shocked".

Women have had to dispose of the blood and tissue in their own home toilet. With no support.

There have been a lack of basic checks, so that the pills have been handed out to women who were not a candidate for them, this includes the abortion and death of a 28 week old unborn baby, and pills sent to a woman 32 weeks pregnant.

Women report extreme pain, fever, vast amount of bleeding and discharge, frightening symptoms for a prolonged period following taking a DIY abortion kit. They are suffering alone. One lady reported a fever and feeling unwell for days.

7% Failure to abort rate at 9-10 weeks gestation, with unknown distress to the foetus. Following a failure, they then are requiring surgical abortion, so that the risk of coronavirus exposure by attending a clinic etc was not reduced at all (the reason the bill was introduced) and the distress to these women and their families is increased in a large number of cases.

My concern is that to quote the Daily Mail this new incentive has "failed to protect the most vulnerable; young girls and single women".

This makes me very suspicious of any new laws at this difficult time. With the complexity of Brexit and coronavirus, I believe that the hate and Public order Bill, should not be rushed through, but many parts should be debated, discussed and properly out worked before the bill is legislated. Again my concern is that whilst the bill intends to protect the most vulnerable, in its current form it may be ineffective or even produce the opposite intention to it's objectives. Similar to the changes to abortion laws.

Thank you for reading my lengthy email. I hope that the bill will be reconsidered, deconstructed, and reconstructed taking on board and listening to the widespread opposition to the bill in its current state.'

Original response to constituent.

Thank you for your email of 5th August in connection with the hate Crime and Public Order (Scotland) Bill.

The Hate Crime and Public Order (Scotland) Bill seeks to modernise, consolidate, and extend Scotland's existing hate crime law – ensuring it is fit for modern Scotland.

Since the introduction of the Bill, there has been much debate around freedom of speech. While there is legitimate debate to be had, some criticism has misrepresented what the Bill does. I firmly believe the Bill strikes the right balance between respecting freedom of speech and tackling hate speech.

The Bill will not prevent people expressing controversial, challenging, or even offensive views, as long as this is not done in a threatening or abusive way that is intended to stir up hatred or likely to stir up hatred. The Bill ensures 'stirring up of hatred' offences do not unduly inhibit freedom of expression protections set out in the European Convention of Human Rights. The Bill actually includes provisions on freedom of expression to ensure the prohibition on stirring up hatred will not unduly restrict people's right to express their faith, or to criticise religious beliefs or practices or sexual practices.

The existing racial hatred offences criminalise conduct which includes threatening, abusive, or "insulting" behaviour and is intended or likely to stir up hatred. This approach is not new - the existing offences of stirring up racial hatred have been in force in Scotland since 1986. Similar offences have existed since the Race Relations Act 1965.

Existing stirring up racial hatred offences were in fact introduced across the UK, including Scotland, by the then UK Government in the mid-1980s. In the late 2000s, the then UK Government extended the concept of stirring up hatred offences to certain other characteristics in England and Wales.

The new stirring-up hatred offences for the other characteristics use a threshold that the conduct must be "threatening or abusive" and intended or likely to stir up hatred. So actions must either be threatening or abusive before the new stirring up hatred offences can be committed. And it is not enough for conduct to be threatening or abusive, there must also be an intention that hatred will be stirred up or it must be likely that the conduct will stir up hatred. Hatred is a very strong emotion. The legislation also includes a defence that the behaviour or communication was, in the particular circumstances, reasonable. I believe that this sets an appropriately high bar before conduct is criminalised.

People are free to hold whatever views or opinions they like. The Bill does not criminalise a person's thoughts or beliefs. What the Bill does is criminalise and hold to account those who express or demonstrate their prejudice in an aggressive or threatening way. For example, by assaulting someone because of their race, or behaving in a threatening or abusive way with the intention to stir up religious hatred in others. The Bill does not seek to stifle criticism or rigorous debate in any way. It is important that people are free to express their views and opinions and the Bill does not change that. For an offence to be committed, the behaviour must be threatening or abusive, with an intent to stir up hatred or a likelihood that hatred will be stirred up. However, the Bill makes it clear that criticism of religious beliefs or practices is not, in itself, threatening or abusive conduct so as to constitute a criminal offence.

As we move ever closer to stage one of the Parliamentary process, the Bill has received support from a number of organisations - including the Equality Network, Victim Support Scotland, Engender, and the Scottish Council of Jewish Communities.

Hate crime has hugely damaging effects on the victims, their families, and communities, and I believe we all must play our part to challenge it.

The Scottish Government is determined to do everything it takes to ensure Scotland is a place where there is zero tolerance of hate crime. This Bill will play an important part in realising this.

I hope this is helpful and if I can be of any further assistance please don't hesitate to get in touch.

Yours sincerely,

Brendan



MARK McDONALD MSP
ABERDEEN DONSIDE

The Scottish Parliament
Pàrlamaid na h-Alba

Mr Humza Yousaf MSP
Cabinet Secretary for Justice
Scottish Government
St. Andrews House
Regent Road
Edinburgh
EH1 3DG

Our Ref: MM3271

10 July 2020

Dear Humza

Re: Concerns about aspects of the Hate Crime and Public Order (Scotland) Bill

I enclose a copy of an email which I have been sent by a constituent. I would be grateful if you could respond to the points my constituent raises in order that I can advise him of the Scottish Government's position.

Yours sincerely

Mark McDonald MSP

-----Original Message-----

From:

Sent: 09 July 2020 23:53

To: McDonald M (Mark), MSP <Mark.McDonald.msp@parliament.scot>

Subject: Letter from your constituent

Thursday 9 July 2020

Dear Mark McDonald

I am writing as your constituent to express concerns about aspects of the Hate Crime and Public Order (Scotland) Bill.

To begin I would like to say that I fundamentally disagree with the bill as a whole and would like it to be scrapped entirely. Further, I would like any reference to the terms "hate speech" and "hate crime" to be repealed in any Scottish Law that possess them. The motivation for any crime can vary greatly and I do not believe that motivation for a crime based on prejudice (of which the Bill only lists a few chosen characteristics) should hold any significance to the prosecution of the crime. The only reference to motivation in criminal law should be for the level of intent as with the difference between man-slaughter and the different degrees of murder. This bill however, disregards intent entirely. Hate is an emotion that everyone experiences and can a very valid emotion to feel in many circumstances. Language can be hateful but it should not be up to the government to decide which is illegal.

This is a clear attack on the freedom of speech and expression which will stifle discussion and relations between different groups, and in general will regress our society. The bill criminalises "abusive" behaviour which is incredibly vague, and adds to the idea that people have a right not to be offended, which I don't think people should have. The term "stir up hate" is incredibly vague and gives power to the accused, the courts and the government to enact this law upon anyone and this will be up to the government's narrow pool of protected characteristics. This law does not penalise "stirring up hate" of - an individual, people of particular class or economic group, people with a particular political stance or follow a particular political party, any physical characteristic of a person (innate or otherwise), people who follow or support any particular group/organisation/company at all - including sports teams. This list can continue further and shows for one - that the Bill does not aim to protect everyone, and two - the absurdity that this bill should even attempt to cover all possible forms of hate. Hate is a part of humanity and should not be criminalised.

Since my disagreement with the bill as a whole is clear, I will point out that I believe that giving a prison sentence of 7 years for "stirring up hate" would be tyrannical and fascist in the truest definitions of the words.

I will move to a couple of specific parts of the bill.

Part 1 Section 1 - (3) "It is immaterial whether or not the offender's malice and ill-will is also based (to any extent) on any other factor."

This allows that there are no defensible circumstances by which someone could commit an offence of the bill, which I find to be wrong. To give an example - a person being physically assaulted, who responds to the assault by verbally attacking a protected characteristic of the attacker, would provide cause for the attacker to pursue hate crime charges for the person being attacked.

Part 2 Section 5 - (1 & 2) To further dispute the use of the term "stir up hatred" I would like to give an example of how this section of the bill could reasonably be pursued within its framework. The "threatening, abusive or insulting material" could be a religious book like the Bible or Quran, since they can be perceived by some as "threatening, abusive or insulting". In this case, "if the material were communicated, hatred would be stirred up against such a group" would apply, since according to the accuser, the book would stir up hatred against their group. Therefore, even possessing one of these books could be the cause to pursue justice for a hate crime. Any material or words spoken should be regarded by the freedom of speech and expression.

I have great concerns for privacy too since this Bill seems to open up the possibility for being persecuted for things said, written, or done in private circumstances (which later possibly become public), to be open to cause offence to someone and invoke them to pursue justice.

I would also like to know if there is any right for this Bill to retroactively persecute anyone for things said, written or done in the past? I do not believe that it is been mentioned in the Bill, though I am not entirely familiar with law.

Part 2 Section 11 & 12 - Only two of the listed characteristics are allowed to be discussed or criticised according to these sections. All of the characteristics, and indeed all things, should be open to discussion and criticism without fear from law. To exclude all but two, this Bill suggests that merely by discussing or criticising these other characteristics could illicit "stirring of hatred". This would be an extreme violation of people's freedom of speech.

Part 4 - This is the only section of the Bill that I agree with.

Blasphemy as such should not be a crime. But since the Scottish Government, through this Bill, have decided which characteristics are important and should be protected from hatred, it will have created a new kind of blasphemy law that picks and chooses instances of when someone is stirring hatred of a group or not.

Regards,

From:

Sent: 28 July 2020 15:35

To: McDonald M (Mark), MSP <Mark.McDonald.msp@parliament.scot>

Subject: Re: Letter from your constituent (Case Ref: MM3289)

Thanks for the reply. However, I still have some concerns with the bill which have not been properly addressed in this response.

Firstly, I think the bill is not needed and justifying its requirement as a way to easily identify those guilty of hate based crimes, such as racism, seems like overkill to simply public shame some criminals. Existing laws already provide this protection albeit without the ability to identify the racists, sexists, or homophobes among us. Creating a new, badly written, poorly thought through law with wide ranging implications on freedom of speech is unnecessary and dangerous. We know where we stand today but once this new law is introduced normal people giving their personal opinion based on their long held beliefs may be criminalised. The police will spend ever more time online monitoring communications instead of policing our communities where interpersonal and property based crime is being committed.

I find it easier to think through the implication of this bill by taking a real life example. For example we have recently seen people calling for JK Rowling to be cancelled for stating an opinion on trans-woman in public spaces. It was a polite, well thought out argument stating her position on the matter that some people, including cast members from the Harry Potter films, disagreed with. Some went as far as saying it was transphobic and was **motivated by malice and ill will**.

How can an outside arbiter decide her intent, after all they are not mind readers? It is simply her opinion based on her experiences that she wants to share so that the debate can be had about this particular issue. Once this bill is introduced conversations about **important topics, such as this, will no longer be had for fear of prosecution**. It shuts down free speech and prevents the evolution of society through open and honest conversation on difficult topics.

Humza Yousaf also states "...[what] the Bill does is introduce new standalone offences of stirring up hatred that cover the characteristics of age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics.". What exactly does stirring up mean? It appears to be a very open ended term that could applied to anything from having a debate with raised voices, as is often seen in parliament, through to preachers asking for suicide bombers to blow up innocent people. But where does the line fall? Would JK Rowling fall fowl of this new law thereby criminalising a woman whose opinion is based on her history of sexual abuse? Would she need to go to court to defend her position? These are important questions to consider.

The question of 'stirring up hatred' in religious works and ownership of religious texts becoming criminalised was side stepped in the response because of the clause in the bill which excludes religion. However, the general point being made using this example was not answered. Let's look at it in terms of the JK Rowling example I mentioned earlier instead of religion. Let's imagine the courts decided that she was guilty of transphobia using this bill due to the contents of her article. This bill would mean that **any reader who printed out the article would now posses 'hate' material resulting in potential prosecution**. If this print out was in turn shown to friends or family then they would also be potential victims of this bill. This seems dangerous and draconian to the point of authoritarianism. Deeming some work as illegal sounds like a policy of 1930's Germany or something that the Soviet Union would have advocated rather than Scotland in 2020. Surely a better way would be to show that a particular point of view was wrong with counterarguments rather than shutting down the conversation by threatening a 7 year jail sentence?

I also completely disagree about the high threshold for criminality. I believe it is the complete opposite is true.

Firstly the section 38 offence of "threatening or abusive behaviour" is one of the most common charges in Scottish criminal law. It states that "behaviour of any kind including, in particular, things said or otherwise communicated as well as things done" and continues to mention conduct that is "likely to cause a reasonable person to suffer fear or alarm" is criminal. This doesn't mean the victim needs to be either alarmed or in fear.

It is open to the interpretation of the authorities of whether fear or alarm is what a reasonable person would feel under the specific circumstances of the case. In practice it is a catch all law that is difficult to defend against and easy to prosecute which is why it is so widely used. In other words a very low bar for criminality. JK Rowling's article caused widespread alarm in some parts of society by expressing a view thought to be transphobic. In an age of "safe spaces" it could easily be argued she was committing a section 38 offence.

Secondly, is "conduct that is intended to **stir up** hatred in others or is likely to do so". Many people reading JK Rowling's article approved of its conclusions and tweeted, made videos, or wrote articles to support her position. She **stirred up** this swell of copycat content all over the internet. Almost any online opinion that is controversial will cause both a positive and negative reaction in this way. Even if they are made by the girl next door. This is the way platforms like facebook and twitter are designed. So there is no doubt that saying something controversial online will cause a reaction. So it comes down to interpretation of what was said and deciding if it was hate speech or not. If it is then **the threshold for criminality is passed by virtue of others online reacting to what was written**. Again, a very low threshold resulting in JK Rowling looking at up to 7 years in jail for her opinion.

Often the defence of the new bill seems to be that it is simply updating an existing bill. However, it must be said, that the previous bill is a poor piece of legislation that has done nothing to prevent hate speech. It has been very successful at criminalising people such as comedian Marcus Meehan for a creating a video that was clearly intended as a joke. Yes it was offensive, in poor taste, and not very funny. However, at the beginning of his video he states 'this is a joke', so the intent was made clear. However during his prosecution the jury was told that context was irrelevant and that the only thing that matters was if he said something that could be considered 'hate speech'. Of course he did, it was the point of the so called joke, and was therefore found guilty. Ironically during the trial both the defence and crown prosecutors both used the 'hate speech' he was convicted of themselves but this was permissible as it was in the context of the case. **So clearly sometimes context does matter** so this must be reflected in the bill. Even if you tell an offensive joke.

With this new bill I am convinced you will see more ridiculous situations like the man arrested for calling a police horse gay. Or a teenager who was arrested for calling the Church of Scientology a cult. Or a cafe owner who was arrested for displaying passages from the bible on a TV screen. These are quite simply ludicrous. It seems to me that basing a more draconian law like this on an already hypocritical and muddled one isn't a sensible course of action.

I also find it interesting that the written response seems to suggest that all the ideas within the bill comes from Lord Bracadale's report with the inference that it should be adopted due to the in-depth study he did. However, it fails to mention that Lord Bracadale also suggested that sex should be included as a protected group but was removed after lobbying by feminist groups. Instead a brand new law will be developed outside the scope of this bill for misogyny whilst completely ignoring misandry. So this bill has actually been adjusted by the government based on what I can only assume is sex bias and therefore can't be defended by simply claiming it is all Lord Bracadale's expert work.

On the bright side it shows there is some flexibility in the bill which I hope is used to change it further as in its current form I believe it is a danger to free speech, free thought, and a free society.

Kind Regards



MARK McDONALD MSP
ABERDEEN DONSIDE

The Scottish Parliament
Pàrlamaid na h-Alba

Mr Humza Yousaf MSP
Cabinet Secretary for Justice
Scottish Government
St. Andrews House
Regent Road
Edinburgh
EH1 3DG

Our Ref: MM3289

11 August 2020

Dear Mr Yousaf

Re: Your Ref – 202000060733 Hate Crime and Public Order (Scotland) Bill

Thank you for your recent correspondence responding to the concerns of my constituent. He has since responded to me with the following points* which he feels are not adequately addressed.

I'd be grateful if you could give consideration to these points and provide me with a further response which I can provide to him.

Yours sincerely

Mark McDonald MSP

**Attachment*



The Scottish Parliament
Pàrlamaid na h-Alba



12th July 2020

Humza Yousaf MSP
Cabinet Secretary for Justice
Scottish Government
EDINBURGH

Dear Humza

[redacted]

INDEPENDENT REVIEW OF HATE CRIME LEGISLATION IN SCOTLAND - MISOGYNY

[redacted – not in scope]

Independent Review of Hate Crime Legislation in Scotland

As discussed at debate which introduced this Bill to Parliament, there was agreement in principle that a standalone offence on misogynistic harassment be developed. A working group to be established to take this forward and consider how the criminal justice system deals with misogyny, including whether there are gaps in the law that could be filled with a specific offence on misogynistic harassment. The group also to consider whether a statutory aggravation and/or stirring up of hatred offences in relation to the characteristic of sex be added, at a future date, to the lists of characteristics to which the new hate crime legislation will apply. I note the Government's commitment to this, and would be interested to know of progress in this regard in tandem with the Bill working its way through the Parliamentary system.

Thank you for your consideration of my requests and I look forward to hearing from you.

I am copying this to the Minister for Older People and Equalities.

Yours sincerely

Linda Fabiani MSP

c.c. Christina McKelvie MSP, Minister for Older People and Equalities

Linda Fabiani MSP for East Kilbride
1/3 Strathmore House, East Kilbride, G74 1LF
Tel: 01355 232 800 Fax: 01355 232 770
E-mail: linda.fabiani.msp@parliament.scot