

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland)
Bill

Written submissions by The Christian Institute

SUMMARY**General points:**

- We welcome the extended timescale for consideration of the Bill. In our view significant changes are needed to the legislation;
- Section 1 has an extremely low threshold and surprising omissions to the protected grounds;
- We have no problem with the offence under Condition A of section 5 covering threatening or inciting a seriously violent act;
- The most helpful change would be to delete Condition B of section 5, which as drafted will have a considerable chilling effect on free speech;
- There will be considerable resource implications for policing. We think the Police Federation is closer to the mark than the official estimates;
- We are puzzled that the Bill creates crimes outside Scotland;
- We attach great importance to the work of the Justice Committee as there has been no public consultation on the Bill whilst the proposals were at a formative stage.

Specific concerns:

- **Section 1 is too broad:**
 - Criminalising “offensive” conduct sets the threshold too low and risks damaging free speech;
 - There is no requirement for public order to be under threat, meaning the offence extends into essentially private settings;
 - The definition of journey to or from a football match includes those not intending to go to the match.
- **Condition B of section 5 is the most concerning part of the Bill and should be removed:**
 - It is unnecessary because of existing legislation such as section 38 of the Criminal Justice and Licensing (Scotland) Act 2010;
 - Any possible benefits of the offence are massively outweighed by the threat it poses to free speech both in terms of its chilling effect and the scenarios it may criminalise, as identified by Aidan O’Neill QC;
 - It extends even into private homes;
 - Such a divisive law could serve to make matters worse.
- **If Condition B is not removed:**
 - A free speech clause must be included. Alex Salmond voted for such a clause in a similar offence in England and Wales;

- The threshold must not be lowered by including abusive/insulting conduct or removing the requirement for intention. Religion is not comparable to race. Controversy about religious belief is healthy, good and necessary;
- The offence should not be extended to cover any other grounds:
 - The Government's intention for the Bill is to combat sectarianism, so no other grounds are necessary;
 - Including further grounds will exacerbate the threat to free speech.

GENERAL POINTS:

Timetable

1. Strong concerns were expressed from many quarters, both within the Scottish Parliament and beyond, over the original timetable given to the Bill. Alex Salmond acknowledged these concerns at First Minister's Questions on 23 June 2011 when he added several months to the timetable. Rather than completing its full parliamentary consideration in two weeks, the Bill is now to be passed by the end of the year.
2. This delay is welcome as it gives more time for scrutiny of the Bill. However, things are already at Stage 2. This legislation was not consulted on prior to being introduced. The lack of public consultation is inconsistent with the common law requirements of fairness and due and proper consultation, as per *R v Brent London Borough Council ex parte Gunning*:

“First, that consultation must be at a time when the proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third.... that adequate time must be given for consideration and response. ...Fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.”¹

Much therefore depends on the Justice Committee.

Resources

3. Any new legislation of this sort is heavily dependent on enforcement if it is to have the desired impact. The Police Federation made it clear when giving evidence to the Justice Committee in June that significant resources will be required to police the Bill. Spokesman Les Gray said in his oral evidence that the Scottish Government's estimate of the cost of implementing the legislation, given in the financial memorandum, is “way off the mark”.² The point was made that the trend has been to reduce the police presence at football matches, a trend which the Police Federation believe will need to be reversed if the new Bill is to be properly applied.³ Similarly, Mr Gray expressed his view that online investigations are likely to “grow arms and legs”, suggesting substantial additional resources will be needed to investigate infringements of the new law via the internet.⁴ In the light of the disparity between the Scottish Government's forecast and the Police Federation's predictions, it must be wondered whether the legislation has been accurately budgeted for by ministers.

¹ *R v Brent London Borough Council ex parte Gunning* [1985] 84 LGR 168 at 189

² Scottish Parliament, Justice Committee Official Report, 21 June 2011, col. 38

³ *Loc cit*

⁴ *Ibid*, col. 49

Territorial scope

4. There are several points at which the Bill is drafted to criminalise activity taking place outside Scotland (e.g. section 7(3)). Aidan O'Neill QC observes that such provisions "would appear to contravene Section 29(2)(a) of the Scotland Act 1998 and so fall outside the legislative competence of the Scottish Parliament to enact".⁵

SPECIFIC COMMENTS ABOUT THE TEXT OF THE BILL

Section 1

a) The significant exclusions from the grounds in section 1(4)

5. Age and sex are omitted from the grounds, perhaps indicating hasty drafting. Political affiliation is also not included within section 1(4). This is despite the fact that political statements are often used as a proxy for sectarianism, such as the flying of Palestinian flags by one set of fans and Israeli flags by their rivals.⁶

b) The breadth of section 1(2)(e)

6. The wording of this particular subsection "other behaviour that a reasonable person would be likely to consider offensive" gives immediate cause for concern. 'Offensive' is a low and uncertain threshold, meaning very different things to different people. One person's offensive remark is another's joke, and this distinction may often be more a question of taste than reasonableness. The behaviour meeting this definition would of course have to be a potential threat to public disorder to fall within the offence, but that requirement is itself fraught with difficulty – a violent reaction could be said to provide prima facie evidence that the necessary threat to public order exists. Taking the two provisions together therefore, a person who takes offence at a particular remark is encouraged to over-react, perhaps in a violent fashion, in order to show that there is a threat to public disorder. Such a law could quickly become a heckler's veto, seriously damaging free speech.

c) The threat of public disorder can be non-existent (section 1(5))

7. The effect of section 1(5) is to allow an offence under section 1 to be committed even when no public disorder is possible. It is an extreme sort of victimless crime, and it can be expected to apply in some surprising situations.
8. For example, a small group of fans of a particular club are assembled in the club's supporters' association premises to watch a televised match. There are no rival fans present. One of the members of the group, aware he is amongst like-minded individuals, tells a joke about the fans of a rival club that would be likely to offend such fans but is amusing to his companions. In doing so, he could be committing an offence under section 1, despite the fact that he has fully considered

⁵ *The Offensive Behaviour in Football and Threatening Communications (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 June 2011 – Advice*, Aidan O'Neill QC, June 2011, para. 2.1(ii)

⁶ *Scottish Daily Record*, 9 December 2002; *The Scotsman*, 12 December 2002

his context and been aware that there is nobody present who could be offended. This example goes to show the lack of a mental element to this offence ('mens rea') – it can be committed without any requirement for intention or even recklessness. It also shows the extraordinary reach of the offence, extending as it does to what is tantamount to private activity. Furthermore, the offence purports to apply whether the supporters' association premises were in Glasgow, Newcastle, Gibraltar or the Falklands.

9. The offence might apply to content of Rangers or Celtic's online TV channels, if something was said or done that was deemed offensive enough to be likely to incite public disorder. Such channels are invariably highly partisan, and if in a discussion during or after a match a presenter said something offensive this could be taken to be within the offence.
10. In considering the application of the section 1 offence to a private venue or club, Aidan O'Neill QC concludes that it "impacts upon the Convention rights protected under Article 10 ECHR (on freedom of expression) and Article 11 ECHR on freedom of assembly and association".⁷

d) Travelling to a match without intending to?

11. Serious concerns have been rightly expressed about the definition of a journey to or from a regulated football match included in section 2(4)(a). In effect, it states that a person may be regarded as having been on a journey to a match even if they were not. This is presumably not the legislative intention, but it is the practical effect of such broad drafting. If the Bill is intended to catch those who travel to matches without tickets, perhaps purely for the purpose of stirring up trouble, it needs to be targeted far more precisely. The current drafting is somewhat contradictory and threatens to bring the law into disrepute because, to the ordinary person, it appears incredible.
12. We acknowledge that the wording used in 2(4)(a) is adopted from the Football Banning Order (FBO) provision of the Police, Public Order and Criminal Justice (Scotland) Act 2006. However, the repetition of flawed legislation does not make it any less flawed and nonsensical. Furthermore, the FBO provisions are not part of the constituent elements of an offence, but are providing for a specific sanction when an offence has already been established. The sanctions involved under section 1 are also much more serious than an FBO, including up to five years in prison.
13. Reaction to such a definition is aptly summed up by the reaction of the convenor to the Justice Committee when considering this matter during the evidence sessions:

"I am sorry, but I am still struggling with section 2(4)(a) ... How can a person be on a journey to or from somewhere if they have no intention of going

⁷ *The Offensive Behaviour in Football and Threatening Communications (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 June 2011 – Advice, Aidan O'Neill QC, June 2011, para. 2.1(v)*

there? How can they be on a journey to or from a regulated football match if they have no intention of going to it?”⁸

14. We feel sure Christine Grahame’s reaction will reflect that of the public. Given the current definition, the following scenario may well fall within the offence:

A Christian evangelist is on a train full of football supporters going to a match. The supporters are going to a big football match in Glasgow. The evangelist is on the way to a church convention in the same city. The evangelist gets into a conversation with a group of supporters, who clearly have had a few beers. The evangelist urges the supporters not to make football their god. In conversation, one of the football supporters says that he is gay and “what would your God say about that?” The evangelist graciously tries to deal with this objection by explaining the Bible’s position on homosexuality as a sin.

15. Although the evangelist has a completely different intended destination to the match, this might not be any defence given the current drafting. Aidan O’Neill QC concluded that “the matter is not free from doubt” given sections 2(2)(c) and 2(4).⁹ Surely such legislation, carrying as it does a potential five year prison sentence, needs to be far more adequately drafted.

2) Section 5

16. Condition A of section 5 does not give cause for concern, although we would question whether or not its territorial scope is within the jurisdiction of the Scottish Parliament. It is Condition B of section 5 that is at the heart of our concerns about the whole Bill.
17. A religious hatred offence could be used by traditional Christians to silence their critics, be they new atheists, liberals or members of other faiths. Condition B could easily be used in this way, but at what cost to free speech?
18. So our starting point is that there should not be any religious hatred offence such as that proposed under Condition B of section 5. Such offences are divisive and pose a great threat to free speech even when they are well drafted. Section 5 is overbroad, imprecise and is not well drafted.
19. Condition B of section 5 is unnecessary. There are very robust alternative provisions available in Scottish law. They include the brand new section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, breach of the peace and aggravated offences provisions. Section 38 only came into force last October¹⁰ and

⁸ The Scottish Parliament, Justice Committee Official Report, 22 June 2011, col. 107

⁹ *The Offensive Behaviour in Football and Threatening Communications (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 June 2011 – Supplementary Advice*, Aidan O’Neill QC, July 2011, para. 2.2(13)

¹⁰ Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 2) Order 2010, Article 2

so has scarcely had time to bed-in, yet the Scottish Government is already launching into new legislation in very similar territory. We believe that section 38, properly used, will be able to tackle genuine cases of sectarianism. As the written submission of Dr Sarah Christie and Dr David McArdle said:

“If the individual were to have communicated material containing or implying a threat of serious violence, or material which is threatening and intends to stir up religious hatred, that would amount to behaving in a threatening, and no doubt in many cases abusive, manner which would be likely to cause fear or alarm to a reasonable person and so would be caught by that section. The Policy Memorandum queries whether s38 could cover all instances of behaviour intended to incite religious hatred but given the nature of material designed to inflame religious ‘hatred’, it would be hard to envisage a communication which was not sufficiently abusive to cause alarm to a reasonable person.”¹¹

20. We endorse those comments. A case in point is that of Iain Rooney, who was charged in early August under both breach of the peace and section 38 for his alleged role in sectarian hate messages being posted on the internet against Celtic Manager Neil Lennon.¹²
21. We suspect that any situations that would be caught by the new section 5 Condition B offence but not by section 38 are simply examples of the new offence unacceptably impeding freedom of expression – reaching into areas where the criminal law should not be intruding.
22. The potential chilling effect of Condition B, to the detriment of free speech throughout Scotland, massively outweighs any possible benefits. Aidan O’Neill QC said the following about the offence:

“it should be noted even if no prosecution was proceeded with, the fact is that having such a broadly defined offence on the statute book will exert a chilling effect on freedom of speech, with individuals indulging in self-censorship and/or harbour an unwillingness to publicly express their true religious beliefs for fear of running foul of the law”.¹³

23. Mr O’Neill believes the chilling effect is illustrated by the following scenario:

¹¹ Submission by Dr Sarah Christie and Dr David McArdle, The Scottish Parliament Justice Committee, June 2011, see <http://www.scottish.parliament.uk/s4/committees/justice/inquiries/OBFTCBill/OB1.pdf> as at 5 August 2011

¹² *The Herald*, 4 August 2011

¹³ *The Offensive Behaviour in Football and Threatening Communications (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 June 2011 – Supplementary Advice*, Aidan O’Neill QC, July 2011, para. 2.2(3)

A Catholic website reproduces a lecture from Pope Benedict XVI given at the University of Regensburg in 2006 in which he repeated a quote saying: “Show me just what Mohammed brought that was new, and there you will find things only evil and inhuman, such as his command to spread by the sword the faith he preached”.¹⁴ A Muslim activist, hearing of a new religious hatred law in Scotland, reports this website to the police, saying that he found it threatening to his faith and intended to stir up hatred of Muslims. A police investigation is commenced, which takes several weeks before reporting back to the Catholic group that they will not be prosecuted. In the meantime, however, the group remove the offending article from their website because they fear further complaints.¹⁵

24. The chilling effect of the legislation will have an impact far beyond its strict legal scope. But even that legal scope is itself problematic. Mr O’Neill considers that all the following situations may fall within the offence:

- A person stops attending his church, rejects his faith and becomes caught up in a religious cult. The elders of the church he had attended wrote to him urging him in strong terms to turn back and mention the “eternal consequences” for him if he does not do so. The letter includes references to the “dangerous and wicked cult” he has joined.
- A Church of Scotland congregation makes its Sunday sermons available on its church website. In one sermon on Christ’s teaching about himself being “the way, the truth and the life”, the preacher denounces the “false claims” of Islam in the strongest of terms and calls on the congregation to “come to Christ, our one true prophet, priest and king”. A Muslim man finds the recording after entering the words “one true prophet” into Google. On locating the sermon he listens to it, finding it hard hitting and deeply challenging (i.e. ‘threatening’) to his beliefs and worldview. He contacts the police to complain.
- A protestant activist is giving out leaflets on Princes Street in Edinburgh during a papal visit to Scotland. The leaflet is highly critical of the papal visit and “reminds” readers of the “blood of the protestant martyrs” and quotes from the 1646 Westminster Confession of Faith (the confessional standard of several Scottish denominations including, historically, the Church of Scotland) that “There is no other head of the Church but the Lord Jesus Christ. Nor can the Pope of Rome, in any sense, be head thereof; but is that Antichrist, that man of sin, and son of perdition, that exalts himself, in the Church, against Christ and all that is called God”. A loyal Roman Catholic who is in the crowd to welcome his spiritual leader to Scotland takes a tract and reads it. He reports the matter to the police.

¹⁴ Pope’s speech at University of Regensburg (*full text*), 20 September 2006, see <http://www.catholicculture.org/news/features/index.cfm?recnum=46474> as at 10 August 2011

¹⁵ *The Offensive Behaviour in Football and Threatening Communications (Scotland) Bill (SP Bill 1)* as introduced in the Scottish Parliament on 16 June 2011 – *Supplementary Advice*, Aidan O’Neill QC, July 2011, para. 2.2(9)

- A Scottish human rights group publishes a speech given by Dutch politician, Geert Wilders, on its website. The speech is particularly hard-hitting in its criticism of the “growing influence of Islam in the West”, calling it a “dangerous and intolerant religion” and calling for anti-sharia law in the UK.
 - A peaceful protest takes place outside the Church of Scientology in Edinburgh. Various placards are held up, including “Scientology is not a religion, it is a dangerous cult”, “Scientology is corrupt, sinister and dangerous”, “the Church of Scientology is an evil organization”, and “Scientology should be thrown out of Britain”. A member of that organisation sees the protest and contacts the police, citing the new religious hatred law.¹⁶
25. The quite extraordinary scope of Condition B is also shown by the fact that it contains no exception for domestic premises. Domestic premises are quite clearly excepted from the section 1 offence, but not section 5. This creates the clear possibility that an individual may commit an offence under section 5 by communicating *within his own home*.
26. The proposal could also make matters worse. Celtic fan Kevin Rooney, in his submission to the Justice Committee, sees the offence being used by fans as “another stick with which to beat their rivals”, mentioning “unhealthy examples of rival fans scouring each other’s websites searching for ‘crimes’ to report to the police”.¹⁷ The Rangers Supporters Assembly expressed “deep concerns as to whether this Bill in its present form will address the issues that it seeks to, or whether it will have a contrary effect in creating more confusion, anger and division”.¹⁸ Bill McVicar of the Law Society of Scotland has predicted “ongoing confusion for some time” if the Bill is passed in its current form.¹⁹
27. The multi-faceted threat to free speech posed by Condition B of section 5 can be amply seen from the above. It is unnecessary because the legal powers to deal with sectarianism are already on the statute book. It is dangerous, because of its potential chilling effect and its actual legal scope. Furthermore, it runs the risk of not only failing to tackle sectarianism but making the situation worse. Condition B should be dropped from the Bill.

Free speech clause

¹⁶ *The Offensive Behaviour in Football and Threatening Communications (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 June 2011 – Supplementary Advice*, Aidan O’Neill QC, July 2011, paras 2.2(2), 2.2(3), 2.2(5), 2.2(6) and 2.2(10)

¹⁷ Submission by Kevin Rooney, The Scottish Parliament Justice Committee, July 2011, para. 6, see <http://www.scottish.parliament.uk/s4/committees/justice/inquiries/OBFTCBill/OB29.pdf> as at 5 August 2011

¹⁸ Submission by the Rangers Supporters Assembly, The Scottish Parliament Justice Committee, June 2011, see <http://www.scottish.parliament.uk/s4/committees/justice/inquiries/OBFTCBill/OB7.pdf> as at 10 August 2011

¹⁹ *Scottish Daily Record*, 22 June 2011

28. If the offence under Condition B of section 5 remains in the Bill, then it is imperative that at least some attempt is made to safeguard free speech. An explicit clause on the face of the Bill is absolutely essential. In England and Wales a similar offence of inciting religious hatred was introduced as Part 3A of the Public Order Act 1986. A free speech clause was included in that offence.²⁰ First Minister Alex Salmond and four other SNP MPs voted for that clause at the time.²¹
29. The policy memorandum to the Bill says that it “does not interfere with the right to preach religious beliefs nor a person’s right to be critical of religious practices or beliefs, even in harsh or strident terms.” If this reflects the policy intention of the Scottish Government, it seems most appropriate to include such wording in the text. A clause should be inserted into the text, for example:
- “For the avoidance of doubt, the preaching of religious beliefs or the criticism of religious practices or beliefs, even in harsh or strident terms, shall not be taken of itself to be threatening or intended to stir up hatred”.
30. A free speech clause to the religious hatred offence is backed by several other interested parties including Equality Network, YouthLink Scotland and the National Secular Society.²²
31. The Equality and Human Rights Commission also seem to favour a free speech clause over a reasonableness defence.²³ They are right to do so, as the problem with a reasonableness defence is at what point it is considered operative by the police and prosecutors. Does the defence become part of the terms of the offence or not, and is it properly taken into account when the law is being applied? The very nature of a defence means that it often only comes in at a late stage, when significant damage has already been done to an individual’s freedom of speech. The

²⁰ Section 29J, which reads: “Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.”

²¹ House of Commons, Hansard, 31 January 2006, cols 238-243

²² Submission by Equality Network, The Scottish Parliament Justice Committee, June 2011, para. 21, see <http://www.scottish.parliament.uk/s4/committees/justice/inquiries/OBFTCBill/OB2.pdf> as at 5 August 2011; Submission by YouthLink Scotland, The Scottish Parliament Justice Committee, June 2011, para. 4.5, see <http://www.scottish.parliament.uk/s4/committees/justice/inquiries/OBFTCBill/OB25.pdf> as at 5 August 2011; Submission by the National Secular Society, The Scottish Parliament Justice Committee, June 2011, para. 1, see <http://www.scottish.parliament.uk/s4/committees/justice/inquiries/OBFTCBill/OB17.pdf> as at 5 August 2011

²³ Submission by the Equality and Human Rights Commission Scotland, The Scottish Parliament Justice Committee, June 2011, para. 4.2 see <http://www.scottish.parliament.uk/s4/committees/justice/inquiries/OBFTCBill/OB23.pdf> as at 5 August 2011

important thing is to get the threshold of an offence right in the first place, without having to rely on a defence of reasonableness correcting imbalanced drafting. Putting a free speech clause within the terms of the offence helps to achieve this, and has far more practical value than a reasonableness defence.

32. When asked about this issue during the Stage 1 debate, Roseanna Cunningham responded by saying that the Scottish Government had sought to protect free speech by not including unrecorded speech in the terms of the offence. But this is an arbitrary distinction and seems to suggest a worryingly narrow understanding of what free speech means. Free speech does not extend only to the spoken word, but any form of expression, be it written or otherwise communicated. Why should it be lawful to say something but criminal to write it down? The logical inconsistencies are obvious and we doubt whether the distinction could be maintained should it be tested in the courts. The same content could breach the law if communicated by sign language, but not if spoken.
33. The best way to protect freedom of expression is not to have an offence such as this at all. But if it is to be introduced, a free speech clause is the only satisfactory way to help minimise the unforeseen infringement of civil liberties.
34. In Aidan O'Neill QC's view, the offence under Condition B "impacts upon the fundamental constitutional right of freedom of speech as well as potentially upon rights of freedom of thought, conscience and religion under Article 9 ECHR as well as freedom of expression under Article 10 ECHR".²⁴

Extension of section 5

35. Some of those giving evidence to the Justice Committee have suggested that the Condition B offence under section 5 should be extended. There are two main suggestions:
- (1) parallel the incitement to racial hatred offence by a) including abusive and insulting words or behaviour within the offence, rather than requiring that the conduct is threatening, and b) including conduct that is likely to stir up hatred, rather than requiring intention;²⁵
 - (2) expand the scope beyond purely religion by including various other grounds, such as sexual orientation, disability and transgender identity.²⁶

²⁴ *The Offensive Behaviour in Football and Threatening Communications (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 June 2011 – Advice*, Aidan O'Neill QC, June 2011, para. 2.1(v)

²⁵ For example, Submission by YouthLink Scotland, The Scottish Parliament Justice Committee, June 2011, para. 4.3, see <http://www.scottish.parliament.uk/s4/committees/justice/inquiries/OBFTCBill/OB25.pdf> as at 5 August 2011

²⁶ For example, Submission by Equality Network, The Scottish Parliament Justice Committee, June 2011, paras 15-18, see <http://www.scottish.parliament.uk/s4/committees/justice/inquiries/OBFTCBill/OB2.pdf> as at 5 August 2011

It is important that both these proposals are resisted.

36. Taking (1) above first, race is very different to religion, and it will be very much easier to invoke the law in the field of religion than in race. Religion is all about ideas, beliefs and philosophies. Religion (and irreligion) governs the choices people make between doctrinal, philosophical or moral alternatives. Race, on the other hand, is an immutable characteristic.
37. Arguments take place between people of different beliefs where people try to convince one another of their point of view. Attempts are routinely made to convince people to change or abandon their religion. Such arguments are obviously not possible over race. Any redrafting of section 5 to make it more like the racial hatred offence would be to fundamentally misunderstand the difference between the two.
38. Religious debate is widespread and, for the most part, entirely peaceful. But criminalising abusive or insulting conduct under section 5 would raise the prospect of what currently passes for argument being regarded as inciting religious hatred. Even ordinary preaching may fall foul of the law, particularly if the requirement for *intention* to stir up hatred is watered down so that the conduct merely has to be likely to do so. Somebody may take the view that a sermon on the uniqueness of Christ as the way of salvation incites religious hatred in a member of the congregation against people of a particular religion. This might seem unlikely now, but what will happen in five, ten or twenty years' time?
39. Our society believes that controversy about whether racism is right or wrong is unacceptable. We have collectively decided it is wrong and legislated against it. But at the same time controversy about religious belief is healthy, good and necessary. This means there are bound to be far more opportunities for invoking a law on religious hatred. Therefore, if a law is to be introduced in this area, it must have a higher threshold than the law on racial hatred.
40. Turning to (2), any new offence should not extend any further than religion. If sectarianism is the target of this legislation, as it is claimed to be, then the religious ground will suffice.
41. There are three reasons why a religious hatred offence along the lines of Condition B should not be introduced at all:
 - (i) it is unnecessary in view of existing laws;
 - (ii) it is dangerous for free speech;
 - (iii) it could make matters worse by being inherently divisive.

All of these points are often just as true of incitement offences on other grounds, and indeed the potential for damaging free speech is multiplied several times over if other grounds are included.

42. The Vogelenzang case illustrates the absurd waste of police time that can result from a false allegation being made about religious hatred. In that case, a complaint was made following a religious discussion over breakfast. It was treated as a religiously aggravated crime and prosecuted in the magistrates' court. It involved at least six police officers, including a detective chief inspector, for a period of several months.²⁷ The case was thrown out by the district judge after a two-day hearing.
43. Having an incitement offence on multiple grounds will significantly escalate the problems for free speech and waste police time. If one group is given a 'nuclear weapon' of an incitement offence, then all the other groups will want their own 'nuclear weapon' too. Going down this route will result in a proliferation of such laws, which dangerously imperils free speech.
44. The way an incitement offence on the grounds of sexual orientation might impact free speech can be illustrated by the disturbing 2006 case of Mario Conti, Archbishop of Glasgow, who was reported to the police for saying in a sermon that civil partnerships undermine marriage. Green MSP and gay rights activist Patrick Harvie called on the police to intervene despite no sexual orientation incitement offence being on the statute book. Patrick Harvie said: "What he [Conti] said was clearly homophobic. This is a matter for the police."²⁸ Had a sexual orientation incitement offence been in place, the police might have had a much more difficult job dismissing the accusation, and similar frivolous claims by those who want to silence dissenting voices would be encouraged.

The Christian Institute

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²⁷ Davies, J G, *A New Inquisition: Religious Persecution in Britain Today*, Civitas, 2010, pages 1-2; *Daily Mail*, 10 December 2009

²⁸ *Sunday Herald*, 15 January 2006