

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Written submission from the Scottish Council of Jewish Communities

The Scottish Council of Jewish Communities strongly supports the Bill's objective to "*root out violent and bigoted attitudes and behaviours from Scottish society and make our communities safer*".¹ We emphasise, however, that this cannot be achieved by legislation alone, and that the Bill must be accompanied by a wide range of Government-supported educational and social initiatives.

Scope of the Bill

1) While we appreciate that the Bill is primarily a response to recent football-related incidents, we regret that the offence of "offensive behaviour" relates exclusively to football and does not cover identical behaviour in other contexts, for example at Scottish Defence League demonstrations² or distributing "threatening, insulting and abusive leaflets"³. It is dangerous to imply that expressing hatred of, or inciting hatred against individuals or communities is less impermissible simply because it does not take place in relation to football, and irrational that the same range of disposals should not be available to the courts for both. We therefore urge that the scope of the Bill should be extended to cover "offensive behaviour" in any context.

2) We are pleased that, contrary to advance publicity, the Bill does not relate only to sectarianism but also encompasses other religious hatreds, and, in respect of "offensive behaviour at regulated football matches", also other protected characteristics. We are, however, concerned that singling out religion as the only protected characteristic with regard to "offensive communications" not only fails to "*contribute to tackling inequalities in Scotland*"⁴, but, on the contrary, risks creating a hierarchy of discrimination.

We agree that "*public disorder at football matches can be provoked and worsened by expressing or inciting hatred against particular groups*"⁵, moreover there is ample evidence of offensive and threatening postings on grounds other than religion, for example on Scottish newspaper websites.⁶

¹ Policy Memorandum paragraph 5

² Scottish Defence League: Paisley Demonstration 26 February 2011
<http://www.libertiesalliance.org/2011/03/04/scottish-defence-league-paisley-demonstration-%E2%80%93-26-february-2011/>

³ Leaflet distributor incited racial hatred
<http://www.heraldscotland.com/sport/spl/aberdeen/leaflet-distributor-incited-racial-hatred-1.135641>

⁴ Policy Memorandum paragraph 2

⁵ *ibid* paragraph 16

⁶ for example: "Tom Patterson, Shoot a Gypsy, Save a Child " You people need to wake up to the stark reality of all that is wrong with society. Anytime a gypsy moves into a neighbourhood, lock up your children. They will abuse them in one way or another."

<http://thescotsman.scotsman.com/news/New-website-lists-missing-paedophiles.2827862.jp>

and

"John M. Slusser II ... I for one am sick to death of the posturing of the last quarter century, bent on forcing the rest of the world into acceptance of the deviant, that's right, deviant behaviour of the so-called gay community. If you want to be an abomination, do so in the confines of your lurid existence away from the public eye. ... I say the two global social ills of this day and age are the so-called gay community, and terrorism."

<http://scotlandonsunday.scotsman.com/latestnews/Death-sentence-gay-Syrian-teenager.3883009.jp>

Furthermore, as ACPOS has emphasized:

“any victim of crime can suffer symptoms of depression, anger, anxiety and post traumatic stress ... [but] whereas victims of non-biased crime can experience a decrease in these symptoms within two years, victims of bias, or hate crime, may need as long as five years to overcome their ordeal.”⁷

“Threatening communications are a serious concern, regardless of whether they are, or can be proven to be, “sectarian” or connected with football”⁸, and we therefore urge that the offence of “offensive communications” should be extended to cover all of the characteristics listed in 1(4)(a) to (g).

3) Although clauses 1(2)(a) and (b) make explicit that the offence of “offensive behaviour at regulated football matches” applies to expressing or stirring up hatred against both individuals and groups, there is no similar statement in respect of “offensive communications”. In our experience, bizarrely, this is not always taken for granted. For example, the Press Complaints Commission responded to a complaint that a series of antisemitic comments in the online comment pages of the *Scotsman* breached the PCC Code:

*“I note that you consider Clause 12 (Discrimination) to have been breached. This Clause is designed to prevent **individuals** being subject to prejudicial or pejorative reference to, among other things, their race or religion. It does not prohibit offensive remarks about a race or religion in general.”*
(their emphasis)

However, as ACPOS has stated:

“It has also been shown that any single hate crime can potentially have multiple victims. Whilst all crime can increase the fear of being targeted in people other than the victim, fear of hate crime escalates dramatically in those who share with an immediate victim, the same group identity that has made a victim a target.”⁹

It is clearly nonsense to contend that whilst offensive communications to or about an individual on grounds of his or her religion are unacceptable, identical comments about Jews, Muslims, Catholics, Protestants, etc in general are not, and we urge that this should be made explicit in the Bill.

Sentencing

Following a conviction last year for having posted antisemitic threats on the *Scotsman* website¹⁰ including “*jews are not fit to breathe our air. They must be attacked wherever you see them; throw rocks at their ugly, hooked nose women and mentally ill children, light up the REAL ovens.*” (sic), the sheriff deferred sentence saying “*I am concerned to protect the public, and it is clear to me that a custodial sentence is appropriate. ... [however] a light sentence would only have the effect of turning you, in your own eyes, and in the eyes of your supporters, into a martyr. I choose not to do that. ... [The deferral] does not mean you will escape custodial sentence, but that the possibility will be hanging over you for twelve*

⁷ ACPOS Hate Crime Guidance Manual 2010
http://www.acpos.police.uk/Documents/Policies/ED_ACPOS_HateCrimeManual_Sept2010.pdf

⁸ Policy Memorandum para 32

⁹ ACPOS Hate Crime Guidance Manual 2010
http://www.acpos.police.uk/Documents/Policies/ED_ACPOS_HateCrimeManual_Sept2010.pdf

¹⁰ http://www.scojec.org/news/2010/10xi_sandia.html

months". We agree that inadequate sentences only serve to exacerbate the problem, and therefore welcome the additional options that this Bill makes available.

Implementation

Although we welcome the determination of the Police and Crown Office to pursue cases to their conclusion, we are concerned that, due to the actions of third parties, this determination has sometimes been frustrated. We are, for example, aware that no prosecution was possible in other incidences of antisemitic postings on newspaper websites, despite the fact the police were able to trace and interview the person believed to be responsible, because the newspaper concerned had destroyed the relevant electronic records. We therefore urge that, if the Bill is passed, the Act should be accompanied by guidance for organisations on the retention of relevant electronic data.

Consultative and Legislative Process

We have some sympathy with the concerns expressed by others in respect of the extremely short time allowed for consultation and consideration of the Bill, especially since the Minister has acknowledged it may be necessary to introduce further legislation on the same subject later in the session. Piecemeal legislation can only serve to confuse; a single piece of more considered legislation would have been preferable, together with an announcement that existing law would be used to its fullest extent to ensure public order during the forthcoming football season.

In particular, we note that two of the Committee's three evidence sessions will be held before the closing date for evidence, with the final session only four days afterwards. We expect that there will be a large number of responses to the call for evidence, and do not believe this timescale will allow the Committee fully to consider issues raised, and introduce appropriate amendments. We welcome the Minister's statement that "*The Government has always been fully committed to tackling bigoted and abusive behaviour, including sectarianism, wherever and whenever it occurs*"¹¹, and, should the short timescale for its consideration prevent the Bill from being amended to reflect this commitment, we call on her to announce a target date for her promised application of the principles of the Bill to Scottish society at large.

Despite these reservations, we support the introduction of the Bill as a "*strong message that bigotry and prejudice have no place in a modern, diverse, multi-cultural Scotland*"¹² and hope that it will make a significant contribution to achieving this aspirational objective.

21 June 2011

Note: The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen, and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges. SCoJeC is Scottish Charity SC029438, and its aims are to advance public understanding about the Jewish religion, culture and community. It works with others to promote good relations and understanding among community groups and to promote equality, and represents the Jewish community in Scotland to government and other statutory and official bodies on matters affecting the Jewish community.

In preparing this response we have consulted widely among members of the Scottish Jewish community.

¹¹ <http://www.youtube.com/watch?v=RPZuIIC9ulc&feature=email>

¹² Policy Memorandum para 64