

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Written submission from Stonewall Scotland

1. INTRODUCTION

PLEASE NOTE: *due to the upsetting nature of some of the evidence submitted under “Evidence of Need” below, the Justice Committee has requested that Stonewall amend or remove parts of it. If you wish to view our original submission, please contact Stonewall Scotland directly or visit our website www.stonewall.org.uk/scotland*

- 1.1 **Stonewall Scotland is one of Scotland’s leading lesbian, gay, bisexual and transgender (LGBT) charities.** We actively work towards equal treatment for LGBT people in Scotland today.
- 1.2 **Stonewall Scotland welcomes the overall policy objectives of the Scottish Government.** The introduction of the Offences Aggravated by Prejudice (Scotland) Act in 2010 clearly demonstrated the Scottish Government’s commitment to tackling discrimination against protected characteristics, by extending aggravations to include disability, sexual orientation and gender identity alongside religious and racial aggravation. We are pleased that the Scottish Government now intends to extend this commitment to areas such as football and threatening communications.
- 1.3 **While we welcome these policy objectives, we have one serious reservation with the bill as currently set out.** Our concern is that the second part of the Bill, covering incitement to hatred, is restricted to religious hatred and does not cover any other protected characteristics, particularly sexual orientation and gender identity. It is our belief that future legislation dealing with crimes motivated by hatred should reflect the approach in the 2010 Act. The Scottish Government should continue to promote a level playing field of between different protected characteristics and not encourage varying levels of protection between groups, i.e., a “hierarchy of discrimination”.
- 1.4 **Extending incitement to hatred to cover the grounds of sexual orientation and gender identity would be an important step forward in tackling hate crime and homophobia in Scotland today.** Research carried out by Stonewall Scotland prior to the commencement of the Offences Aggravated by Prejudice (Scotland) Act 2010 has shown that two thirds of LGBT people in Scotland had experienced a verbal homophobic attack, and a third had experienced a physical homophobic attack. Research has also shown there is likely to be significant under-reporting of these kinds of offences, particularly verbal threats and abuse, so the true figures are likely to be even higher. More extensive research findings are under paragraph 3.2 below.

2 OFFENCES AT FOOTBALL

2.1 We welcome the proposed offence under clause 1 of the Bill. It has already been acknowledged by the Scottish Parliament that Scotland has faced serious issues around sectarianism in football in the past, and the opportunity to tackle this and other prevalent issues, such as homophobia, with specific legislation is welcomed. A substantial proportion of offensive and threatening behaviour that occurs at football matches is not always dealt with fully by existing laws, and this legislation will go some way towards tackling the problem.

2.2 Stonewall's 2009 research report, Leagues Behind, collected the experiences of football fans, amateur football players and football industry executives regarding homophobia in football. The report found that 70% football fans who have attended matches in the last five years have heard anti-gay language and chants targeted at fans, players, managers and officials. Respondents felt that homophobic abuse was treated far less seriously than racist abuse or other types of discrimination, and that the failure to challenge anti-gay abuse and discrimination has contributed to a culture within football where anti-gay abuse is acceptable. Whilst the SFA has developed a code of conduct which is broadcast over the public address system at all Scottish football matches, prohibiting offensive behaviour of all kinds, this does not do enough to actively prevent incidents occurring or deal with those that occur. Additionally, the SFA Code only specifically discourages verbal abuse on the grounds of "race, religion, gender or ability", not sexual orientation. As such, we are glad to see that the Scottish Government is planning to tackle this problem.

3 THREATENING COMMUNICATIONS

3.1 We welcome the CONDITION A offence as set out under clause 5(2). However, we believe that the Scottish Government should extend the CONDITION B offence set out under clause 5(5), incitement to religious hatred, to cover hatred on the grounds of sexual orientation and transgender identity. We set out our reasons below.

3.2 There is a serious problem with homophobic and transphobic hate crime in Scotland today. Figures recently released by the Crown Office & Procurator Fiscal Service show that in 2010 – 2011 there were 448 recorded hate crimes which were aggravated by homophobia and 14 aggravated by transphobia. This is the first period that mandatory monitoring of incidents with homophobic and transphobic aggravations has been in place across all police forces in Scotland. Stonewall Scotland research (*How Safe Are You, 2010*) suggests that these figures are affected by under-reporting of incidents. We found that **one in three** lesbian, gay, bisexual or transgender people in Scotland have been the victims of a physical assault and **two in three** have suffered verbal abuse; however **61% of these incidents went unreported.**

- 3.3 On the basis of the severity of the hate crime situation, there is no argument for restricting the incitement to hatred offence to religious hatred alone.** As reported, homophobic and transphobic hate crime is almost on par with the level of religious hate crime in the same period (693 incidents in 2010 – 2011). The level of under-reporting suggested by Stonewall Scotland's research suggests that the true figure for LGBT hate crime is significantly higher than reported.
- 3.4 Restricting the incitement to hatred offence to religious hatred would send out an undesirable message about hatred of minorities in Scotland today.** As noted by the Working Group on Hate Crime (October 2004 Report, para 5.4), one of the key values of hate crime legislation is the clear message that it sends out about unacceptable behaviour in contemporary society. By seeming to prioritise one protected characteristic, the Bill as currently constituted suggests that incitement to hatred of other protected characteristics is considered less serious in principle. This concentration on one protected characteristic is out of step with recent pieces of legislation passed in Scotland and the UK in recent years, most notable the Offences Aggravated by Prejudice (Scotland) Act 2010 and the Equality Act 2010.
- 3.5 Restricting the incitement to hatred offence to religious hatred would have a corrosive effect on the free and open discussion of important issues.** We are in favour of a free and comprehensive debate around important contemporary issues such as equal marriage, religious civil partnerships, same-sex adoption, and homophobic and transphobic bullying. We feel it is essential for views from across society to be expressed and considered. However, these conversations should be conducted in temperate and reasonable terms and from a level playing field, without some voices being accorded a greater protection than others within the debate.
- 3.6 There is a serious legislative gap between Scotland and the rest of the UK.** The policy memorandum (e.g., para. 40) notes that there is a gap in religious protection between Scotland and the rest of the UK. However, it fails to acknowledge that incitement to hatred on the grounds of sexual orientation is an offence in England and Wales under s. 74 of the Criminal Justice and Immigration Act 2008 and that there is no similar law in Scotland. During the passage of the Bill through the House of Lords it was often claimed that such legislation would have chilling effect on freedom of speech. However, since this section came into force on 23rd March 2010 there has been no evidence of any such effect.

4 EVIDENCE OF NEED

4.1 Homophobic websites

All of these websites are freely available within Scotland and often have Scottish specific, homophobic content, repeatedly linking homosexuality with paedophilia, rape and claims about the 'gay agenda'.

<http://www.gayconspiracy.info/homotruth.html>

"The natural attraction between girls and boys has been so confused by public celebration of homosexuality and the various eroticisms of everyday life..." Some material has been removed.

<http://www.intmensorg.info/scotland2.htm>

Some material has been removed.

<http://ffkfightingforkids.weebly.com/political-perverts--sex-offenders.html>

Includes several gay politicians in their list of *"Political Perverts"*, a list purporting to expose public servants who are paedophiles.

<http://www.realstreet.co.uk/2011/03/video-frocks-and-pompoms-for-primary-school-boys/>

This site equates educating children about different family makeups with damaging abuse.

4.2 Religious homophobia

There have been numerous homophobic statements made by members of Scotland's religious community that go beyond the mere expression on religious opinion. Examples include:

<http://www.youtube.com/watch?v=CGAmeRxsAzM>

<http://www.islamicparty.com/commonsense/36movement.htm#tc>

"No man or woman of ordinary intelligence who has a gramme of common sense or human decency could conclude other than that homosexuality is a curse, a blight and a bane on mankind, and that as far as possible this perversion should be eradicated, in particular that the young should be kept out of the clutches of its practitioners and advocates."

[Westboro Baptist Church. www.godhatesfags.com](http://www.godhatesfags.com)

This US based church are a virulently homophobic organisation and have threatened to conduct homophobic protests in Scotland on several occasions. Notably, they intend to picket on 30th October 2011 in Aberdeen. Similar attempts to picket in May 2011 and May 2009 were only interrupted because church members were banned from entering the UK by the Home Secretary. *"God hates Scotland – Land of the Sodomite Damned"*.

We can provide further evidence of these examples if required.

4.3 Political homophobia

<http://www.bpp.org.uk/opposingqueers.html>

"The British People's Party opposes homosexuality as a perversion of nature. We do NOT allow homosexuals and lesbians into membership. If the BPP find any have joined they will expelled immediately! ... You can find members of the Pink Mafia everywhere, like maggots infesting a rotting piece of wood. The BPP call for the law

against homosexuality to be brought back and these unnatural sexual practices made illegal once again.”

BNP Flyers. Stonewall has been passed BNP flyers picturing the bodies of dead children and claiming that equalising the age of consent would result in further harm to children. They clearly equate homosexuality to paedophilia and murder. Similarly, many openly gay politicians are included on the BNP’s list “*Liars, Buggers and Thieves*” <http://liarsbuggersandthieves.blogspot.com/>

Planned Scottish Defence League activity. The Scottish Defence League, an organisation known to have virulently homophobic members, has applied to hold demonstrations within Edinburgh. Despite their application being refused the group still intends to hold a “static demonstration” in Edinburgh on September 10th.

All of these groups currently have an active campaigning presence in Scotland. Examples can be provided if required.

4.4 Song lyrics and popular culture

[Note: at the request of the Parliament, we have removed the lyrics cited in Stonewall’s original submission, which can be found on our website]

Threatening, homophobic lyrics in some reggae and rap songs are clearly intended to incite hatred against lesbians and gay men. No legal action can currently be taken to prevent the sale or distribution of such material in Scotland. Many of these lyrics are explicitly violent or advocate violence against LGBT people. As such they would fall under the CONDITION A offence in the bill:

- Beenie Man – Roll Deep
- Beenie Man – Han Up Deh
- Buju Banton – Boom Bye Bye

Other songs, while not as violent, are still clearly threatening in nature and would fall under CONDITION B were this to be extended to cover other protected characteristics. Examples include the following:

- Dr. Evil - Stay Far Away From We
- M.O.D – A.I.D.S
- Sizzla – Azinido
- Kardinal Offishal & Akon – Kill De Dance
- Beenie Man – Zion
- Mavado – Dem a F**

All of the listed lyrics are from songs currently available to buy in Britain from websites such as Amazon or iTunes.

5 CONCLUSION

We are in favour of the overall policy objectives of this Bill and welcome the intentions of the Scottish Government in tackling abuse in sport and threatening

communications within society. However, with the extended Bill period, we feel that CONDITION B within the Bill should be expanded to cover other protected characteristics. There is clear evidence of a need for this protection in relation to LGBT related abuse and incitement to hatred. Similarly, there is no argument for denying parity of protection by restricting the incitement of hatred clause to one protected characteristic alone. By extending CONDITION B the Scottish Government can close the legislative gap between Scotland and the rest of the UK and continue to demonstrate the admirable approach to equalities that it has displayed in recent years.

Stonewall Scotland would be happy to expand upon these points by giving oral evidence.

Alan Wardle
Interim Director, Stonewall Scotland
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