Justice Committee

Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill

Written submission from Dominic O'Hagan

1. Do you agree with the proposal in the Bill to repeal the 2012 Act? What are your reasons for coming to this view?

Yes. If something is considered so dangerous or offensive that it should be deemed illegal then that behaviour/speech should be made illegal across the board. Picking out football fans shows that this legislation has nothing to do with hate crime. Hate crime legislation exists for good reason, if people are in breach of that they should be arrested. The Offensive Behaviour at Football and Threatening Communications Act does not give added protections for these groups.

I have personally seen how the Act has soured relations with police and fans.

2. Did you support the original legislation?

No.

3. Do you consider that other existing provisions of criminal law are sufficient to prosecute offensive behaviour related to football which leads to public disorder? If so, could you specify the criminal law provisions? Or does repeal of section 1 risk creating a gap in the criminal law?

Yes. Breach of the Peace and the Hate Crime Act 2008 cover all the areas that the Act supposedly try and tackle.

4. Do you have a view on the focus of section 1 of the 2012 Act, which criminalises behaviour surrounding watching, attending or travelling to or from football matches, which may not be criminalised in other settings?

See answer 1. If something is considered so dangerous or offensive that it should be deemed illegal then that behaviour/speech should be made illegal across the board. Limits to freedom of speech can be justified but only if they are applied across the board, otherwise it’s needlessly criminalising certain communities.

5. Do you consider that other existing provisions of criminal law are sufficient to prosecute threats made with the intent of causing a person or persons fear or alarm or inciting religious hatred? If so, could you specify the criminal law provisions? Or does repeal of section 6 risk creating a gap in the criminal law?

My understanding is that Section 6 has hardly been used in the whole period since it was enacted and that police and prosecutors regularly use other legislation eg Communications Act, 2003.
Once again, if a hate crime has been committed this is already part of law.

6. Do you have a view on the proposed transitional arrangements in the Bill: that there should be no further convictions for section 1 and 6 offences from the date on which the repeal of those offences takes effect; and that the police will cease issuing fixed penalty notices at least from the point at which the Bill is passed?

I think that the act should be repealed with immediate effect. If possible I think all current cases should be thrown out. Where possible I believe that previous convictions should be quashed.

7. To what extent do you consider that the 2012 Act has assisted in tackling sectarianism?

In my view the Act has not assisted in any way shape or form the tackling of sectarianism. In fact, where there could be a perceived sectarian influence I have noticed an increase in ‘offensive behaviour’. Politicians, police and supporters of the act have constantly refused to explain what can be considered ‘sectarian’. I believe this is because they are unsure about the definition themselves.

Hate crime is wrong, be it based on religious, sexual, racial, gender etc. The Act cannot be shown to having led to a decrease in any of the above and so on that alone it has been a failure.

What has been criminalised is one section of society expressing views that, while often unpopular, would not be criminalised at a university.

Dominic O'Hagan
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