

## Justice Committee

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

#### Letter from Dr John Kelly

With regard to the recent Justice Committee evidence gathering relating to the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill, I regret to note that the Scottish Government's Minister for Community Safety and Legal Affairs has selectively quoted me as offering "support for the legislation and its intentions" (p.2 of OBR218) when this was not the case. To be unequivocal, I do not and have never supported this legislation as it stands. The selective section of the BBC interview used – which itself, is merely a selective sample of my wider comments on this (proposed and actual) Bill – evidence initial support for the intentions behind what was at the time a proposed Bill. My support which is evident in the quote used, relates to isolated elements of the proposed Bill – in particular, avoiding using the word 'sectarian/ism' and the related point that the proposed Bill appeared to offer protection for those with 'sectarian' identities (as opposed to viewing them as the problem to be fixed). It is quite clear, however, that my initial hope around these quite particular elements of the proposed Bill have not been borne out in the reality of how the Bill was finally worded and ultimately practised.

For the record, this small sample was recorded on June 17<sup>th</sup> 2011. I direct you to my detailed written submission to the Justice Committee on the proposed Bill 4 days later on 17<sup>th</sup> June 2011 (published on the Scottish Government website). Here, it is clear that I have serious reservations about the Bill. In this submission, I did offer support for the principle of ethnic and national origins being protected rather than demonised just as I had previously in the BBC interview where I've been quoted. But I made clear what I believed to be the Bill's shortcomings. See quotes below:

*"I am struck by some important points that continue being missed... For example, on the Politics Scotland show (BBC1, 19/6/11) Roseanna Cunningham, and the police spokesman, were unable to explicitly specify what the police would arrest someone for in relation to the Bill"*

*"...by including 'offensive behaviour' in the title, the proposed Bill is misleading the public and making it difficult for everyone to actually differentiate what is going to be allowed and prohibited. Causing offence per se is not and cannot be made illegal and therefore I cannot understand why this phrase appears in the title".*

*"By including 'offensive behaviour' in the title, there is an inescapable inevitability that confusion and disagreement will flourish".*

*"I do realise that there are other offensive behaviours that the government would like to see disappear and that it may be impractical and unrealistic to legally prohibit these. But a confusing and ultimately unworkable Bill is*

*unlikely to do this better than grown up debate and dialogue with the offenders”.*

*“The biggest problem with the proposed Bill is the equivocal Section 1(2)(e) (‘behaviour that a reasonable person would be likely to consider offensive’) ... clause 1(2)(e) is surely too broad and conceptually inaccurate. ... causing offence cannot and should not be outlawed in a democratic and free society... If clause 1(2)(e) is left as this ambiguous phrase, I fear that we will have numerous accusations of ‘reasonable’ people being ‘offended’ and calling for 5-year jail sentences for what cannot actually be classified as illegal in any court worth its title ... ‘Reasonable’ people are not always aware of the subtleties of prejudice, racism and bigotry, and are sometimes unable to differentiate legitimate identities from bigoted behaviour.... Therefore, arbiters deemed by some to be ‘reasonable’ cannot be charged with upholding laws that are governed by such subjective and contested terms, symbols and interpretations. The law must be explicit and unequivocal here”.*

I am dismayed that my words have been used out of context and selectively by the Minister for Community Safety and Legal Affairs to evidence academic support for the Bill. I wish it to be noted for the record – and considered appropriately by the Justice Committee – that I do not and have never supported this Bill. Indeed, my reservations (quoted above) from 2011 have shown to be justified given the reality of how the Bill has been implemented and enacted.

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28 August 2017