OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Justice Committee

Tuesday 10 November 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 10 November 2020

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JUSTICE COMMITTEE
27th Meeting 2020, Session 5

CONVENER

*Adam Tomkins (Glasgow) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)
*John Finnie (Highlands and Islands) (Green)
*James Kelly (Glasgow) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

The Rev Stephen Allison (Free Church of Scotland)
Neil Barber (National Secular Society)
Ephraim Borowski (Scottish Council of Jewish Communities)
David Bradwell (Church of Scotland)
Lisa Clark (Scottish PEN)
David Greig (Royal Lyceum Theatre)
Anthony Horan (Catholic Parliamentary Office of the Bishops Conference of Scotland)
Isobel Ingham-Barrow (Muslim Engagement and Development)
Ravi Ladva (Hindu Forum of Britain (Scotland Chapter))
John McLellan (Scottish Newspaper Society)
Hardeep Singh (Network of Sikh Organisations)
Fraser Sutherland (Humanist Society Scotland)
Kieran Turner (Evangelical Alliance)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Virtual Meeting

Scottish Parliament

Justice Committee

Tuesday 10 November 2020

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Adam Tomkins): Good morning, everyone, and welcome to the 27th meeting of the Justice Committee. We have received no apologies this morning.

Our first item of business is a decision on taking in private item 3 on our agenda. If members do not agree to take that item in private, please indicate that in the BlueJeans chat function. No member has indicated that they disagree, so that is agreed.

Hate Crime and Public Order (Scotland) Bill: Stage 1

09:30

The Convener: The next item of business is the continuation of stage 1 consideration of the Hate Crime and Public Order (Scotland) Bill. We have two panels of multiple witnesses today. Our first panel comprises John McLellan, director, Scottish Newspaper Society; Lisa Clark, project manager, Scottish PEN; Fraser Sutherland, chief executive, Humanist Society Scotland; and David Greig, artistic director, Royal Lyceum Theatre, Edinburgh. David is also associated with many other theatres in Scotland. I welcome all of them and thank them very much for joining us.

Members of the committee are going to ask questions of the witnesses. Members will direct their questions to particular panel members. If any of our witnesses wants to respond to a question and feel that they have not been given the chance to, they should please alert me and the clerks through the chat box in BlueJeans.

We will have about an hour and a quarter for this panel and, hopefully, the witnesses will be able to tell us what they want to tell us about the bill during that time.

I will ask a general opening question and will put it to Lisa Clark first. Your written evidence was submitted before the Cabinet Secretary for Justice, Humza Yousaf, indicated the amendments that he now proposes to make to the bill at stage 2. It was very clear from that evidence that you were concerned that there were significant infringements on freedom of speech in the bill. Have your fears been allayed somewhat, completely or not at all by virtue of the cabinet secretary's proposed amendments?

Lisa Clark (Scottish PEN): Our written submission focused a lot on our concerns about freedom of expression, particularly in relation to part 2 of the bill, which is on stirring-up offences, and the proposal that offences "likely to" stir up hatred would be included without a requirement of intention to do so on the part of the accused. Therefore, the cabinet secretary's amendment to focus on the requirement to prove intention to stir up hatred is welcomed and has eased a lot of our anxieties about the potential for a chilling effect on writers in Scotland.

We have more proposals to make and there are some points that I would like to raise today. However, as the convener said, that was a big focus of our submission and the cabinet secretary's amendments have been a very helpful development from our point of view.

The Convener: Will you to outline what further proposals you would like to see made in addition to what the cabinet secretary has already proposed?

Lisa Clark: Sure. We argue that it would be helpful to strengthen the reasonableness defence by including a new section in the bill that would take account of the literary, artistic, journalistic, comic or scholarly character of behaviour or communication. That would provide assurance to writers that those considerations will be made by the court and that they are not, necessarily, a target of the bill.

We were also keen to have the offences restricted to those that are "threatening and abusive", removing "insulting". That would make the bill more accessible, reduce complexity and avoid contradicting the logic of consolidation, which we support. I am sure that other issues will come up, in particular around part 4 of the bill, on offences relating to theatre and public performances. We were not convinced about the need for that provision. However, Scottish PEN considers the move towards intention a positive step.

The Convener: That is very helpful. I ask the same question to John McLellan.

John McLellan (Scottish Newspaper Society): [*Inaudible*.]

The Convener: I cannot hear John—he appears to have been unmuted, but there is no sound. While broadcasting fixes that issue, I will put the same question to Fraser Sutherland.

Fraser Sutherland (Humanist Society Scotland): I echo some of the points that were made by Lisa Clark. The change to remove the words "likely to" and so stick with intention are very welcome. The initial concern was that "likely to" would have a chilling and worrying effect on free expression, particularly for artists and others.

The only other thing that I would continue to make the case for—we made the point in our written submission to the committee and to the Scottish Government prior to the introduction of the bill—is that the bill should try to echo the freedom of expression provision in the Religious and Racial Hatred Act 2006 for England and Wales, in relation to religion, which is much wider in scope than the freedom of expression section in the bill. The provision on freedom of expression in the 2006 act says that nothing in that part of the act

"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".

That underlines some of the points that have been made by the justice secretary himself, including that the intention is not to control people's ability to have discussions about religion or issues surrounding religion but is to protect people who are religious from acts of hatred. That is a laudable aim, but the justice secretary's point should be included in the bill. It is not there at the moment.

I would add to what Lisa Clark said about removing "insulting". It would not be helpful to include "insulting" as an offence in the bill. I am talking from my perspective, with a particular focus on religion. The Law Commission for England and Wales has endorsed that view on "insulting" relating to religion. It says:

"Ridicule has for long been an acceptable means of focusing attention upon a particular aspect of religious practice or dogma which its opponents regard as offending against the wider interests of society, and in that context the use of abuse or insults may well be regarded as a legitimate means of expressing a point of view upon the matter at issue."

We should be careful about the use of "insulting" in relation to religion. I know that some groups have asked for that provision to be expanded.

The Convener: That is very helpful indeed. I ask David Greig the same question.

David Greig (Royal Lyceum Theatre): I admit that I came late to the process, so I do not really know about earlier iterations of the bill and can speak only about the version that I have looked at. My concern is specifically about the section on theatre. Broadly speaking, that section is unnecessary. Theatre is the only art form that the bill specifically identifies. By so doing, it is as if it is seeking a solution for a problem that does not exist. Theatre could be covered by a general purpose provision.

I worry that identifying theatre could create a deep problem. Theatre is about people standing up on stage and representing points of view. The overall piece may not have an intention. You sometimes want to put points of view on stage that we are expected to challenge or to whole-heartedly disapprove of. That has been part of theatre since the ancient Greeks used it to explore taboos and to break boundaries.

In my preparation for the meeting I was unable to find examples, either in Britain or abroad, of plays that would have stirred up hatred against groups but were successfully censored so that we would now think, "Phew, it was great that they did that." I could think of no such examples, whereas I could think of many examples of plays that in some way wished to promote, protect or put forward the point of view of a group with a protected characteristic but which had been

censored. We now look back and regard that as foolish.

It is ironic that the definition of "theatre" in the bill comes from the Theatres Act 1968, which ended the censorship of theatre in Britain. I do not see why Scotland would want to reintroduce theatre censorship.

The Convener: If John McLellan is back with us, I invite him to respond to those issues.

John McLellan: Can you hear me now?

The Convener: Yes, we can.

John McLellan: Hurray! The update from the cabinet secretary was broadly welcome, as it indicated a sense of direction, but our main concerns remain. Lisa Clark said something important, which was that the clarification would be helpful when cases come to court, but the main issue is with the processes that lead up to court: the defences and exceptions that come up as cases are being investigated.

There is a significant danger that institutions such as ours that are involved in communication will still be open to investigation and action. Even if those actions are subsequently unsuccessful, the process and consequences of the investigation are as serious as being convicted. People's lives can be put on hold. People who have led law-abiding lives and have done nothing wrong can find themselves involved in police investigations. That remains a huge concern for us, despite the welcome reassurances that we have been given.

Annabelle Ewing (Cowdenbeath) (SNP): I have a question specifically for John McLellan and Lisa Clark. It concerns a recent suggestion that religiously inflammatory material would be subject to destruction. If we look south of the border, we see that a not-dissimilar offence was introduced in the Religious and Racial Hatred Act 2006. That offence operates in a slightly different way but has done so in England and Wales since 2007. It concerns the possession of religiously inflammatory material. As far as I am aware, there is no evidence that anything has been destroyed. The same position pertains to the possession of racially inflammatory material. That has been an offence across the United Kingdom for many decades, but there is, again, no evidence that amy material has been destroyed.

In this debate, should we not be looking at the issue in a temperate and objective way? Where there are relevant facts to be garnered elsewhere, including in this instance from the operation of a not-dissimilar law in England and Wales, should we not reflect on that experience to inform our debate here in Scotland?

09:45

John McLellan: We are reflecting on all aspects of the proposed legislation, but just because something has not happened in another jurisdiction, that does not mean that it would not or could not happen here. In this process, it is legitimate to raise concerns and make sure that they are subjected to full scrutiny.

The other point is that the proposed legislation is not the same as the legislation that exists in England and Wales. I think that Annabelle Ewing is referring to a statement given at the weekend—I cannot remember by whom—and I have referred to that issue obliquely in my written submission. It may not have happened in England, but that does not mean that it is not likely to happen here. We just do not know that. For something as serious as that, the job should be to make sure that the legislation does not allow for it at all and that it cannot happen.

Lisa Clark: I echo John McLellan's point. It is definitely a conversation worth having. We know that there is a concern for writers; they self-censor the subjects that they explore and the research that they undertake as part of their work when it is suggested that possession of certain materials will be held against them in some way. We are keen to have the conversation and make sure that clear guidance is given—particularly, from our perspective, to writers—about what the bill includes in its scope. For example, it is clear to us that having in our possession a book that might hold intolerant views is not in the scope of the bill, but having the intent to communicate the views held in that book and to promote them is completely different. I agree that the conversation is worth having and that it is a serious issue. Clarity is what is needed, to ensure that an unnecessary chilling effect on the issues that writers and journalists explore is not allowed to develop.

Annabelle Ewing: I thank both witnesses for their responses. I appreciate that time is tight, but I just want to say that I am not suggesting that we do not have the conversation. However, it would perhaps not be unhelpful to look at what has happened in other jurisdictions where essentially similar provisions have been made, as has been the case across the UK for racially inflammatory material. I presume that there would be a lobby to amend the relevant legislation in England and Wales if there were such concerns about that provision. Has John McLellan been involved in attempts to lobby to amend legislation south of the border, if the issue is of such huge concern to him?

John McLellan: No, I have not, but what is of concern to me is cases where we have seen the seizure of such things as computers and phone

records in an investigative process. One of the big concerns about this legislation as a whole is that that kind of process would be widened. I still hold to the view that, just because something has not happened somewhere else, that does not mean that different legislation will not produce the effect that we fear here. I agree with Annabelle Ewing that all aspects of the principle should be explored, but to say that it cannot happen because it has not happened in England and Wales misses the point.

Annabelle Ewing: I suggest that, on the balance of probability, one has to look at those issues as, in life, one does not have a crystal ball. However, the answers have been interesting.

The Convener: One material difference between the provisions in England and Wales and those in the bill is the extent of the free speech protections. As we have already heard, those extend in England and Wales to antipathy, dislike, ridicule and so on, rather than merely being limited to discussion and criticism. Perhaps Liam McArthur will take up that issue.

Liam McArthur (Orkney Islands) (LD): That was precisely the segue that I was going to refer to.

Fraser Sutherland has already mentioned some of his concerns about the need for the bill to extend the freedom of expression provisions to a couple of areas, but not across the board. We have heard serious and consistent concerns about that. There has been a suggestion that we should adopt the approach that is taken in the legislation south of the border. As the witnesses may well be aware, the cabinet secretary conceded a willingness to look at both broadening and deepening the freedom of expression provisions in the bill. What do the witnesses think of that? Could John McLellan start?

John McLellan: Sorry, could you repeat the question?

Liam McArthur: My question relates to the freedom of expression protections. The cabinet secretary has indicated a willingness to look at both broadening the way in which the protections apply and deepening them. Would you support that, and what do you envisage that involving?

John McLellan: The fundamental problem that we have is that the protections are defences, not exemptions—they do not prevent investigations. From experience, we know that it is all very well to include defences, but that will mean that people would still be involved in the torturous process of proving that the defences were legitimate and that charges should not be brought or, indeed, that a case would ultimately fail if it were to go to court.

Our position is that the bill does not present absolute exemptions; rather, it presents defences, and the two are not the same. Although the cabinet secretary's announcement is welcome, it would not prevent investigation or, indeed, prosecution. As I said in my written evidence, something like 57 journalists have been investigated for alleged breaches of existing criminal law and their lives were put on hold while investigations proceeded. Those cases ultimately went to court and failed or were dismissed. The bill has the potential to do that. Even if every case that came forward did not ultimately result in a prosecution, the process involved in reaching that point is a significant concern for us. People would be put through the mill to prove that they had nothing to answer for.

Lisa Clark: Our submission did not consider the investigation stage to the extent that John McClellan's did. We would not want to see an undue burden being placed on journalists. We know from our work on defamation reform that when legal action is brought against a journalist or a writer, it can be a lengthy and costly process. Certainly, I would be open to learning more and offering further clarity on the point that John has just raised, although that was not a focus of our submission.

Our main argument was that the bill should have a provision that strengthens the reasonableness defence. As I have already said, the bill should ensure that the courts pay due regard to the artistic or literary merit of behaviour or communication.

On our position on freedom of expression and the Hate Crime and Public Order (Scotland) Bill in general, we are under no illusion about serious harm being caused in society by hate crime. Writers from protected groups are massively underrepresented in literature and the arts, and those who have a platform are often at a heightened risk of abuse afterwards. We feel confident that the bill supports freedom of expression for those writers, whose voices often go unheard, and that there is the potential to create a safer cultural space. We recognise the need for writers to hold those in power to account, to be provocative in their art and literature, and to challenge conventional outlooks. Aside from the strengthening of the reasonableness defence, clear guidance, accessible communication and transparency on the scope of the bill should support that, ease writers' anxieties about what the bill is trying to achieve and create a healthier environment for all writers.

Liam McArthur: I see that Fraser Sutherland wants to come in. I hope that he will add to what he said earlier about the defences, including the reasonableness defence.

Fraser Sutherland: Annabelle Ewing mentioned other jurisdictions. Perhaps a lot can be

learned from the work of the United Nations Human Rights Committee and the Rabat plan of action, which discusses the particular issue of how to protect people from incitement to hatred, and how to balance that with protecting freedom of expression. A lot of work was done in detailing a six-part test on how to balance those two things. The test requires any legislature to consider the context of the speech, who the speaker is—their position or status in society—whether the person has intent, which we have talked about, the content and form of the speech, the extent of the speech in terms of how many people it is likely to reach, and the likelihood, including imminence, of harm. The most important thing to take away from the Rabat principles is that they define "incitement" as referring to

"statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups."

Like Lisa Clark, we are under no illusion about people being targeted with hate crimes, and that absolutely needs to be dealt with. The bill is the right way to do that, and we support its general principles, but the issue is the balance in relation to the stirring-up offences and where freedom of expression is protected. I encourage parliamentarians to have a close look at the United Nations six-part Rabat test and to see whether they can replicate that in the bill or, potentially, in guidance that will go to the police and prosecutors.

Liam McArthur: That is very helpful.

David Greig: I want to speak about nuisance or malicious attempts to use this, with people probably being found to be not guilty ultimately, but the process of investigation being problematic. Theatre provides a specific example. Obviously, a play gets put on—it may be put on for three weeks, for example—and, unlike a book or a film, it is time limited. Therefore, plays become a focus. There is a kind of theatre of protest, and there is a danger, in that we already see picketing outside theatres as a means of trying to get plays shut down—and they can be shut down.

A little more than 10 years ago in Scotland, the Scottish trans writer Jo Clifford was picketed at the Tron for her play "The Gospel According to Jesus, Queen of Heaven". "The Sash", by Hector MacMillan, was picketed by Pastor Jack Glass in the 1970s. In Birmingham, "Behzti", which was written by a young Sikh female writer, was picketed by elders in the Sikh community, because it discussed sexual abuse in the Sikh community. Of course, we all remember "Jerry Springer: The Opera" being picketed.

My point is that it would be incredibly easy for such organised picketing events to be supported by the claim that the play under discussion sought to promote hatred against the group in question, whether Sikhs or Protestants, or—in the case of Jo Clifford—a religion. As a result, the play might be shut down, or there could be circumstances in which the producers decided to shut down the play to avoid the costs associated with—[*Inaudible*.]

10:00

For me, that is another reason why putting theatre in its own category in that way almost creates a target. I can think of concrete examples of situations in which prosecutions would be lodged because theatre itself is a type of theatre and, often, certain groups might wish to draw attention to their cause, even if their case would ultimately be unsuccessful.

Liam McArthur: Your provision of specific examples was very helpful.

The Convener: Shona Robison has a quick supplementary for John McLellan.

Shona Robison (Dundee City East) (SNP): In response to Annabelle Ewing, John McLellan mentioned the seizing of computers and phone records. I would like to clarify what he was referring to. Was he referring to the existing criminal law? Does he think that that should not happen if it is alleged that a crime has been committed?

John McLellan: No, that is not the point that I was making. Throughout the phone-hacking investigations, computers and phone records were seized. Obviously, there was criminality there, because 10 people were successfully prosecuted and some went to jail.

In all the investigations, which stretched to 67 individuals, there was seizure of computers and other materials. If a criminal law is created and there is then a criminal investigation, the seizure of equipment related to that investigation would be an inevitable part of it.

Shona Robison: That is helpful—thank you.

The Convener: James Kelly has some questions about the provisions on theatres in section 4.

James Kelly (Glasgow) (Lab): Good morning. The issue of theatrical performances has already been picked up by David Greig and Lisa Clark, and it has featured heavily in previous evidence sessions. We need to think about how the issue can be dealt with as we progress to stage 2 and consider amendments.

Do you think that section 4 of the bill can be amended to make it robust, or do you think that it should be deleted in its entirety, as a previous witness has suggested?

Lisa Clark: It was not at all clear to us why plays and public performances were picked out. We did not think that a clear rationale was set out in the policy memorandum that accompanies the bill. We have not suggested any amendments to section 4, because we were not clear about the thinking behind it. We would probably come down more on the side of removing the section. We think that, if someone were to use a theatrical platform to stir up hatred against a protected group, that would be covered by the rest of the bill. We have no amendments to propose.

David Greig: I concur with Lisa Clark. I think that, if theatre were to stir up hatred in some way that the bill wishes to stop, that would already be covered. Therefore, I think that section 4 should be struck out.

The only case that I came across in my investigations was one in Germany in which a neo-Nazi group held a rally and, in order to try to defend against a similar offence of stirring up hatred, described that as putting on a play. That was a sort of weird reversal. However, the defence was unsuccessful, because it was obvious that the group was not putting on a play.

It seems to me that there is no great need to identify the putting on of a play as a separate category and that doing so almost draws attention to the issue and creates a circumstance in which it will become a focus in a really problematic way. I return to the fact that, if I wished to stir up hatred, a play in a theatre is just about the last way that I would do it. That is because of the nature of dialogue, as well as the whole cost of putting on a play. There are many reasons why a play is a very unlikely format for that purpose. Therefore, the easiest thing to do would be to strike out the section. I do not think that there would be any danger of a resulting gap.

The Convener: It is beginning to feel as if that particular aspect of the bill is an analogue offence for a digital age.

Liam Kerr has a series of questions on the stirring-up offences.

Liam Kerr (North East Scotland) (Con): I will direct some specific questions to the witnesses, starting with John McLellan. He talked about cases coming to court. He mentioned this issue in his written submission, but I would be interested to hear him elaborate on the point. I presume that, if the bill is passed as drafted and if I am offended by something that I read in a newspaper column and decide that it is hate speech, I can report that as a potential crime. In those circumstances, what would happen to the newspaper or columnist that would be different from what happens under the current civil processes and penalties? What would be the impact on that columnist's and/or newspaper's willingness to publish such news in future?

John McLellan: Straightforwardly, the person would be interviewed under caution. That is the starting point. To put my councillor hat on, I have previously written about the fact that a man in his 70s in my ward had a complaint made against him for a post on social media and ended up being interviewed under caution in St Leonards police station. Nothing came of it and the case was dismissed, but nonetheless a man in his 70s had to turn up at a police station, with legal advice, to be questioned by police officers about something that he had posted on social media.

That is what the bill would produce. Editors and journalists would be interviewed under caution if a complaint was made, because the police would be honour bound to investigate. The implications of that are huge. For example, in the past year, there have been 21 complaints to the regulator under its discrimination clause from groups of people who were not related to the particular subject of the article. Most of those cases could be raised in Scotland under the proposed legislation.

Once an allegation of a crime has been made, the police do not have much choice about whether to dismiss it; they have to investigate it. Certainly, when new legislation is introduced, even with something as mundane as a change in speeding regulations, the police are automatically under pressure to make sure that the legislation has been worth it, and they are checked up on to see whether they have been following the new instructions. Therefore, my view is that, if the bill was passed, pressure would be put on the police to ensure that they investigated properly any complaints that were brought to them. We know from the existing cases that lots of those kinds of complaints happen all the time.

Liam Kerr: You said that there are 21 complaints to the regulator, and presumably those involve a civil penalty. We know, from section 3(8), that, under a criminal penalty, there could be conviction, on indictment, to imprisonment to a term not exceeding seven years. If that is right, what impact could that have on the willingness of the columnist or the newspapers to publish?

John McLellan: It would be a brave person who would risk going to jail for seven years for something that they had written. The problem here is that they would not necessarily know that they were committing an offence when they wrote the piece or when it was published. Someone might think that what they have written is fair and balanced, but someone else might take offence at it and claim that it is in breach of the law, and, if a complaint was made to the police, the police would have to investigate it. Even if you accept that a chilling factor might make someone do

everything that they could to stay within the law, there is still no guarantee that a complaint would not be lodged.

In broad terms, most publishers would seek to avoid becoming embroiled in repeated costly and lengthy investigations. Again, the issue is not just the likelihood of a sentence at the end of the process, it is the cost of the process of proving that you have not committed an offence. That is just as big a danger as the sentences themselves.

Liam Kerr: On that point, I have two brief questions for Lisa Clark of Scottish PEN, who will come at things from a slightly different angle from John McLellan.

Lisa, what is your view about the impact on writers potentially being held criminally accountable for how their work is interpreted or misinterpreted by others?

Lisa Clark: The first draft of the bill certainly raised a lot of concerns for us because it was left open to cover the way in which someone's work is perceived by others, regardless of their intention. That has now been clarified, and the requirement for someone to have intended to stir up hatred limits the scope of that provision in a way that we find helpful.

I also note that the provision that we have called for that would strengthen the reasonableness defence would be available to everyone at all stages of the process, including the police, so it would not just be reserved to the final court decisions. We hope that guidance and training on that provision would be helpful and ensure that journalists who are writing in the public interest are considered as part of that.

Our submission did not focus on the pre-emptive impact of cost, which John McLellan mentioned with regard to news outlets, so I would not want to speak to that point too much.

For us, there is always a risk that writers will self-censor and that there will be a chilling effect on the issues that people choose to explore in their work. However, clear guidance about what the bill is trying to achieve would help with that.

Liam Kerr: You have mentioned the reasonableness defence a few times. Do you have any comment on the burden of proof under the reasonableness defence lying on the defence, or is it your view that that could be reworked to be more appropriate?

Lisa Clark: That is a good point. It is not something that we explored in our submission, but I could certainly see how it would be helpful to explore that issue. We would be open to undertaking further consultation on that point if that was felt to be helpful.

Liam Kerr: I have no further questions, convener. Somebody else might want to pick up on that point.

The Convener: That is helpful. So far, we have focused on the stirring-up offences, but we will now move on to look at other equally important elements of the bill. John Finnie and Shona Robison have questions about the statutory aggravation factors.

10:15

John Finnie (Highlands and Islands) (Green): If the convener will allow me a bit of latitude, I would like to draw on Ms Clark's use of the term "chilling effect", which was also used several times by Mr McLellan. Scottish PEN's submission refers to "Scottish Chilling: Impact of Government and Corporate Surveillance on Writers", which was a report that it produced with colleagues at the University of Strathclyde. As Ms Clark articulated, the submission says:

> "when writers feel their work and communication is being monitored by the state, they are more likely to refrain from writing about sensitive subjects or, in some cases, refrain from writing altogether."

That is entirely understandable. The examples that are given are the Soviet Union, China and Iran, but the report goes on to say:

> "The question of the harms caused by widespread surveillance in democracies, is underexplored."

Should we infer from that that you believe that there is monitoring under the present legislation? If so, who is doing that monitoring, and to what extent does that influence whether prosecutors and police are proactive rather than reactive in responding to complaints from the public?

Lisa Clark: As you said, our "Scottish Chilling" report focuses on writers' responses to state surveillance. It is absolutely a concern for writers that that inhibits them in the subjects that they choose to explore in their work. We would be concerned if there was evidence to suggest that police and prosecutors were taking active steps to investigate, rather than reacting to complaints that were submitted. That would certainly have an impact on writers across Scotland.

John Finnie: Does John McLellan want to comment on whether, under the existing provisions—setting aside the additional proposals in the bill—there is any proactivity by prosecutors and police in relation to writing?

John McLellan: I am not aware that the police indulge in regular monitoring of press content for the sake of it, unless, of course, it involves coverage of them. As we saw from the Emma Caldwell case, the police are capable of going beyond the law to find out where information has

come from. However, the police learned from that case. They were severely criticised for their actions in that regard, and there has been a change of chief constable in the intervening time.

At the moment, I do not sense that journalists who work for news publishers are under constant threat from, or surveillance by, the police. My fear is that, as the Scottish Police Federation has pointed out, the bill draws the police into such activity. That is a great concern.

John Finnie: Lord Bracadale recommended repealing the offence of racially aggravated harassment under, ironically, section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995. Is it necessary to retain the offence of racially aggravated harassment, given that aggravated harassment offences for other characteristics are not in place?

Fraser Sutherland: I do not have a huge amount to say on that. Given that this whole process has been about bringing together all the different pieces of legislation so that there is equal treatment for the different characteristics, Lord Bracadale's recommendation would be a welcome approach, rather than trying to maintain other legislation. If we are trying to bring together the offences in one piece of legislation, the different characteristics should be treated equally. That would be my approach.

John Finnie: The matter might not be in your area, Mr Greig, but do you have a view on retaining the offence on the grounds of race?

David Greig: Speaking personally, I agree with Fraser Sutherland. From the perspective of the theatre, I do not feel that I have expertise on that issue, but I would have thought that all protected characteristics should be treated equally.

John Finnie: Okay; thank you very much.

Shona Robison: My question is about statutory aggravations as a general approach to dealing with hate crime. Their continued use as the core method of prosecuting hate crime has been broadly welcomed. Does any witness have a view on that and are they content with what is in the bill?

John McLellan: I do not have any particular comment to make about that. I agree with what David Greig and Fraser Sutherland have just said about equalisation. That refers mainly to other offences that are aggravated by hate. That is fair enough, and I know that it is of great concern to the police. I am not sure that it is particularly appropriate in a news publishing sense, but I do not have that much more to add.

Fraser Sutherland: I agree that statutory aggravations should be the main way of dealing with it, but I want to make a point about the width of the religiously motivated aggravations and what is not currently included in that.

The murder of Mr Asad Shah in Glasgow was not considered to be a hate crime, because his beliefs were considered to be unusual or unique. At the time, in 2016, the Lord Advocate wrote to the justice secretary to highlight what he saw as a gap in the law. Lord Bracadale considered that, but he did not consider that it needed to be closed. That concerns me for a number of reasons.

First, people who leave a religious group are quite often targets for violence or persecution, particularly from a closed religious community. There is a question about whether so-called "apostates" would be protected under the bill. They should be, and the Justice Committee would probably agree that anyone who is targeted because they have left a religious group should be protected in the same way as someone who is targeted because of their religion.

What was brought out in the case of Tanveer Ahmed v Her Majesty's Advocate in 2016 relates to article 9 of the European convention on human rights, which stipulates that

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief ... either alone or in community with others".

To be fair to him, Lord Bracadale has taken the approach that if someone is part of a religious community, or a defined religious group, they are, and they should be, protected under hate crime legislation. However, if their beliefs are considered perhaps unusual or quite unique, they should not be protected under the statutory aggravations that are in part 1 of the bill. I argue that they should be protected.

There has been no clearer case of religiously motivated killing in the 21st century in Scotland than the Asad Shah case. Given that the whole review was carried out on the back of that murder—albeit that it was not the only reason—and because of the Lord Advocate's letter, it is disappointing that that gap has not been closed. I would like the committee to consider that in its stage 1 report.

The Convener: Sorry to intervene, Fraser. Did that case result in a conviction?

Fraser Sutherland: Yes. There was a conviction of murder, but there was no statutory aggravation because, in essence, it was not considered a hate crime.

The Convener: What was the sentence?

Fraser Sutherland: It was a life sentence, because it was a murder case.

The Convener: Given that the function of statutory aggravations goes to sentencing, and given that, in any event, a life sentence was imposed on the convicted individual, I am not sure that—

Fraser Sutherland: The question would be for a lesser crime. For example, if a person were to vandalise someone's house because they are a member of a religious community, that would be dealt with as a statutory aggravation. If someone's car is vandalised because they are an apostate of a religion, that is not considered to be a hate crime.

The Convener: I understand all that. I wanted to make sure that I had not misunderstood what you were trying to say about the particular case that you were talking about. The case that you were talking about resulted in a conviction for murder and a life sentence. It is difficult to see how that sentence could have been compounded.

Fraser Sutherland: No, but there is a question of classification. The Cabinet Secretary for Justice said that one of the purposes of stirring-up offences is that hate crime is counted as such, and there is enough statistical evidence to measure it. I cannot give you a better example of a religiously motivated murder, yet it is not classified as such in the statistics because it was not considered a hate crime. That is the point that I am making.

The Convener: I apologise to Shona Robison for cutting across her, but Lisa Clark and David Greig also want to come in.

Lisa Clark: To return to Shona Robison's point, Scottish PEN supports the model of aggravators that is set out in part 1. We believe that the consolidation that is outlined in the bill would make it more accessible and transparent, and ensure that crimes can be identified in a clear and consistent way.

David Greig: In theatre, protected characteristics have been helpful in our work, in the sense that, all the time, we identify how many plays we put on with regard to certain characteristics, in order to make sure that we are looking after people with protected characteristics as we welcome them to the theatre. I want to separate out that element and say that it is very helpful. Therefore, in general, we support such a consistent way of understanding things, but I wish to talk specifically about the stirring up of hatred element.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I will ask about the bill's different approach to race; however, first, I will go to Lisa Clark. Do you agree with your colleague Dr Andrew Tickell, who said in evidence that the bill is "mired in hyperbole and confusion"?

Lisa Clark: I do not think that the bill is mired in confusion. I think that the surrounding conversation could be argued as such, and I guess that Dr Tickell felt the same way. There has been a lot of online speculation about the bill, and about people not being able to speak freely in their own homes. I find that speculation quite harmful and it contributes to the creation of unnecessary fear about the potential censorship of writers. There is a lot of great stuff in the bill for writers, and for those who have protected characteristics and whose freedom of expression is suppressed as a result.

Rona Mackay: The bill would treat race differently, and would provide that insulting behaviour would not require intent. Given that two thirds of all hate crimes are related to race, is there justification for that approach?

Lisa Clark: Yes, we absolutely recognise the reasoning behind the inclusion of insulting behaviour. Responding to race-based hate crime is a massive issue that must be tackled. We think that there are many different ways to do that beyond legislation. I think that the issue is that insulting behaviour is a term that is even more subjective and less well understood, whereas threatening and abusive behaviour is already well established in Scots law.

10:30

We agree with Lord Bracadale that race should be treated in the same way as other protected characteristics. For those cases that might have come under insulting behaviour, moving them to an abusive behaviour charge or the communication charge would be more effective in securing a charge. We are not clear on the specific examples to which a charge of abusive behaviour might not also apply. We feel that treating all characteristics the same would reduce complexity, ensure that the bill is well understood, accessible and allow the logic of consolidation to continue throughout the bill.

Rona Mackay: What is John McLellan's view on the different approach taken to race in the bill? I am conscious of the time, but if other witnesses want to come in on the subject, they should type R in the chat box.

John McLellan: Lisa Clark's comments were fair. To return to your original question about Andrew Tickell's view, I do not think that the bill is confused; it is fairly clear. The problem is that its implications and its application are confusing and have not been properly thought through. It is the unintended consequences that concern me, and that is where the problems arise.

Rona Mackay: Can I interrupt for a second, please? Is there anything in the bill that you approve of?

John McLellan: I agree with the provisions on blasphemy and things like that. The problem is that the bill is a catch-all for news publishers. I am here to represent the interests of the news publishing industry. The bill poses clear dangers for us. I am seeking an exemption for legitimate news publishing. We do not see the need for the bill to be applied to our industry.

There are other areas in the bill that do not affect me and on which I have not commented—it is not for me to judge whether those are good or bad. However, I am very concerned about the bits that affect me.

Rona Mackay: I presume that everyone is concerned about protecting vulnerable groups.

John McLellan: I agree with that.

Rona Mackay: What is your view on the different approach to race in the bill?

John McLellan: I do not have anything particular to say about that, other than that the equalisation of discrimination legislation is a good thing.

Rona Mackay: Unless anyone else wants to come in, that is all from me, convener.

The Convener: Fulton MacGregor and Annabelle Ewing have questions about hate crime characteristics.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I have a general question. Do any of the witnesses have concerns about how the hate crime characteristics are defined in the bill?

As a wee bit of background, we have explored issues about Gypsy Travellers, asylum seekers and refugees, and it is suggested that they be included in the bill. We have also talked about there being no provisions on sectarianism. I will probably ask the next panel of witnesses more about that, but I would like to hear your general thoughts on the issue. Annabelle Ewing will come in on the issue of sex and misogyny, so I would be grateful if the witnesses could take that into account when responding to my question.

Being cognisant of the convener's earlier remarks about time and there being no need for every witness to answer every question, I put my question to Fraser Sutherland and Lisa Clark, although I am happy to take John McLellan and David Bradwell, if they want to come in.

Fraser Sutherland: Some of the groups that you mention, such as Gypsy Travellers, could be considered under the racial heading if any hatred was targeted at them. We should look at who is included within those thresholds. There are legitimate concerns from those communities. You could include them by using the racial characteristic.

I do not agree with the attempt to legislate for sectarianism as a separate characteristic. The easiest course is to restrict that to religious hatred, which is what you have in the protected characteristic of religion. The discussion of sectarianism has been about Christian sectarianism, but sectarianism also exists between different sects of other religions. To legislate for one particular type when other sectarianism also exists would be a mistake. A far better approach would be to have a wider, catch-all crime of religiously-motivated hatred.

Fulton MacGregor: I can clarify that the bill does not provide for sectarianism; we are asking about that. What you have said is what we have also heard from other witnesses.

Lisa Clark: We did not respond to the idea of expanding the groups that would be protected by the scope of the bill.

I understand that a working group is considering adding an offence of misogynistic harassment. We would be keen to hear from experts working in gender-based violence and violence against women before we take a view on that. That applies to other characteristics too. We would welcome evidence from people who work with those communities before we take a stance.

Fulton MacGregor: Convener, I am happy to ask the other witnesses whether they have anything to say, or, to save time, they could come in when Annabelle Ewing asks her questions.

The Convener: No one has indicated that they want to come in.

Annabelle Ewing: I return to the protected characteristic of sex and the way that the bill is drafted. As Lisa Clark says, it is notable that the characteristic of sex is not currently included in the bill. Lisa said that she wanted to see the results of the working group. Does she or Fraser Sutherland have any comment about whether that is the best approach, given the timing issues? The working group should take the time that it needs to do its job, but that might take years and the legislation might be put in place in the meantime without the characteristic of sex being included. That would mean that it is not protected by the aggravation or stirring-up offences.

Fraser Sutherland: That is a reasonable concern. There could be a gap in the legislation. I have said all along that there should be equal protection for each characteristic. I have sympathy with and respect for the women's organisations that have approached the Government about the

aim of having a misogynistic hatred offence and the reasons for that. I understand their reasons. I would err on the side of caution and give the working group time to work out those issues and to decide what they want.

On that specific issue, I want to raise the issue of protests that happen outside maternity hospitals, wards and clinics. Around seven of those in Scotland are subject to anti-abortion protests. That is the kind of thing that I think that this kind of misogynistic hate crime provision could help to tackle, because it is harassment that is exclusively targeted at women—usually pregnant women—and is based on the protesters' belief that women should be mothers and should not have abortions. At these protests, leaflets containing distressing and false information are handed out, abortion and miscarriage patients are approached and followed and women who are not even accessing services, particularly those with children, are also stopped.

Members of this committee will know that buffer zones and so on have been introduced in England and Wales, but I wonder whether that is something that you might recommend that the misogyny working group looks at, too, given that the bill is not only a hate crime bill but a public order bill. The issue that I raise is of serious concern to a number of women.

Lisa Clark: It is completely understandable that the working group should look at the issue. Gender-based violence is poorly understood in society, and there are issues around access to evidence regarding women's experiences. We understand that, for women writers, there are specific issues around online harassment. There are specific issues that face women in all walks of life. It is a complex area, and I understand that some women's organisations have raised concerns about whether including a misogynistic harassment charge in the bill is the best way to tackle such nuanced issues that spread into all aspects of life.

We are keen to learn more from the experts in this area, and we have no real objections to the time that it takes to fully consider such serious issues.

Annabelle Ewing: Thank you for those comments. I note the suggestion from Fraser Sutherland. Equally, I would have thought that it would be entirely appropriate for the Humanist Society itself to make suggestions to the working group, when it is up and running.

The Convener: Do any members of the panel have any issues to share with the committee before we close this part of the meeting?

Fraser Sutherland: I know that you will discuss this issue with the next panel, but I will say that we very much welcome the provision to repeal the blasphemy legislation. We have campaigned for that for a number of years, as part of the global humanist movement, which campaigns to remove blasphemy laws in all jurisdictions. We are obviously pleased to see it in the bill.

David Greig: Thank you for listening to me throughout the meeting. I have just one more small point to make. Scotland is not just a place where theatre gets made; because of the Edinburgh festivals and, indeed, more broadly, we are a place that theatre comes to. I want to reiterate that theatre is a focus for things because it is a live event. It would be a sad result of the bill if, as I think would be likely, there were to be a malicious or nuisance prosecution of a play that came to the Edinburgh festival, for example, or a play that was produced in Scotland, and world attention was drawn to us in a situation in which a play was in danger of being shut down because of a prosecution. I think that it is extremely likely that such a prosecution would not be in the spirit of what the hate crimes legislation is trying to achieve but would, in fact, almost certainly have an impact on a powerless or less powerful group. I just want to focus once more on the idea that identifying theatre separately could bring about really quite wide problems and could simply result in theatre being picked out, because it is a very obvious target.

The Convener: Thank you very much for your closing remarks, and I thank all four of you for your time this morning. The evidence that you have given has helped the committee significantly in its understanding of the implications of the bill and we are grateful to you.

We will suspend for five minutes to enable a changeover of witnesses.

10:45

Meeting suspended.

10:50

On resuming—

The Convener: Welcome back, everyone. We continue our consideration of the Hate Crime and Public Order (Scotland) Bill. I will introduce everybody on our large panel of witnesses before we get under way.

We have Anthony Horan from the Catholic Parliamentary Office of the Bishops Conference of Scotland; David Bradwell from the Church of Scotland; Kieran Turner from the Evangelical Alliance; the Rev Stephen Allison from the Free Church of Scotland; Ravi Ladva from the Hindu Forum of Britain; Isobel Ingham-Barrow from Muslim Engagement and Development; Ephraim

Borowski from the Scottish Council of Jewish Communities; Neil Barber from the National Secular Society; and Hardeep Singh from the Network of Sikh Organisations.

If we were all together in the Parliament, we would be doing this in round-table format, rather than having a panel of witnesses at one end of the table. I hope to run it as a round-table discussion, even though we are all in our separate silos looking at each other on screens.

Thank you very much for joining us. We have about an hour and a half. Even with that time, it will not be possible for every witness to answer every question from every member. I want to ensure that, by the end of the session, you have all have told us what you want to tell us, so please use the chat function that we can all see on the BlueJeans system that we are using. If you want to intervene or respond to a question at any point, and you have not already been asked by a committee member to do so, please type R, which is the signal that we will use to indicate that you have, as it were, raised your hand and want to say something.

We will not have time to go round the table and make introductory comments, so I will launch straight in. First, however, I want to thank you for your lengthy and extremely helpful written submissions, all of which are, as usual, available on the committee's web pages. The written submissions were signed off before the Cabinet Secretary for Justice indicated that the Scottish Government will make amendments to the bill. Many of your written submissions were, like so many others that we have received, concerned in particular about the implications of the stirring-up offences in part 2 of the bill on freedom of speech.

I will direct my question to Anthony Horan first. To what extent are your concerns about freedom of speech in the bill allayed by the cabinet secretary's proposed amendments?

Anthony Horan (Catholic Parliamentary Office of the Bishops Conference of Scotland): Thank you for inviting me on to the panel to give evidence. We welcome the Government's decision to move to an intent-only stirring-up offence, which goes some way to allay the concerns that we outlined in our initial submission. However, we still have a number of concerns with the bill, which are principally around the freedom of expression provisions. We welcome the cabinet secretary's commitment to look at the breadth and depth of those provisions, which is something that he has recently promised to do.

As it stands, there is a hierarchy—there is a gradation of victims, if you like, in which people in groups relating to religion and sexual orientation are treated differently for their protected characteristics because they are explicitly mentioned in the freedom of expression provisions. However, as Lord Bracadale said, those provisions should cut across all protected characteristics to ensure equity.

We believe—as Lord Bracadale also suggested—that the freedom of expression provisions should be broadened to include expressions of antipathy, dislike, ridicule and insult. It is interesting to note that the Government drafted those very terms into its original Offensive Behaviour at Football and Threatening Communications (Scotland) Bill. Therefore, that is not alien to it; it has done that before, and I believe that it should include those terms in the Hate Crime and Public Order (Scotland) Bill.

Another suggestion in relation to freedom of expression is to consider the inclusion of other belief systems, so that we are not talking only about religions. Again, that would be to ensure equity for all protected groups.

We still have concerns about the definition of the term "abusive". We feel that that could be wildly interpreted, creating the potential for a chilling effect on free speech and expression. It would help if, at the very least, the Government gave us some clarity around the term, and perhaps adopted an approach similar to that contained in the Domestic Abuse (Scotland) Act 2018, which includes a definition of abusive behaviour.

We also have concerns outstanding about the term "inflammatory". Although the move to intent only that the Government has outlined will protect people from being prosecuted for having possession of, with intent to communicate, or communicating, harmless material or for personally held beliefs, the term "inflammatory" still needs clarification. It would be helpful to know what the Government means by "inflammatory", because what arouses anger or hostility in each individual is very subjective. For example, some people might feel that some of the views expressed in religious texts or literature—although widely held by many in society—are inflammatory, which might lead to malicious complainants.

In our written submission, we have given the example of the Catholic understanding of the human person and of the belief that gender—which is very topical—is not fluid and changeable, which might be a view that could be considered inflammatory by some people, leading to a police investigation. Therefore, clarity around the definition of inflammatory might help to alleviate some concerns, which I believe are well founded.

In addition, the term "abusive"—which, as I outlined, can still be widely interpreted—of course, still applies to the offence in relation to the

inflammatory provision in the bill. We therefore need clarity on that, too.

I also have some concerns around the term "insulting" and the racial stirring-up offences. However, I note that Rona Mackay asked a question on those points specifically in the previous session. Convener, I do not know whether you want me to hold off on that area, or whether I should go into it now.

The Convener: Rona Mackay will cover that ground in due course. That is a very helpful introductory set of remarks. I know that Ephraim Borowski wants to come in. However, before I bring him in, I will turn to the Rev Stephen Allison and then to David Bradwell, with the same question that I asked Anthony Horan.

The Rev Stephen Allison (Free Church of Scotland): Good morning, everyone. It is great to be here. We are pleased, as the Free Church of Scotland, to have been invited to join with a number of other witnesses to give the committee evidence.

We mostly agree with what Anthony Horan said. The move to intention is helpful, as there was so much concern about the likely-to-stir-up-hatred aspect of the bill and the unintended consequences of that. Lots of people raised that as a concern, and we welcome its being removed. However, "intention" is a legally defined term that does not necessarily mean what common people take the word to mean. We therefore still have some concerns about its use. For example, we looked at the "Jury Manual", which says:

> "Intention is a state of mind, to be inferred or deduced from what's been proved to have been said or done."

We know that we cannot get inside people's minds, so the facts and circumstances are what prove intention, which could still lead to dispute in court about whether something was intended.

More broadly, that leads to our concerns around the chilling effect for freedom of speech and around debate and discussion being shut down. We are concerned that people would have to prove defences, that they would have to defend themselves in an investigation and that they might face being interviewed and having material confiscated or looked at extensively under offences of possessing inflammatory material, even if that does not ultimately lead to conviction and there are good defences, such as freedom of speech.

11:00

Our written submission also states that we are concerned that the defences need to be broadened and made clearer. Therefore, we of course welcomed the justice secretary saying that he wants to consider that. Maybe we will talk more about that later.

However, the fact that those defences still have to be proven, or put forward, by the accused makes us worry for freedom of speech. It also worries us that publishers and distributors of material could be affected by the offences in the bill, because although we might be quite happy to speak and take the risk, publishers or those who are producing our material might not want to. That has an effect on freedom of speech.

I completely agree with Anthony Horan that the provision on religious belief must be broadened to include other beliefs and those of no belief at all. At the moment, some of it could be read as protecting those who have religious belief, but not atheists, whom we regularly want to debate, engage and discuss issues with. As the bill is drafted, they might not get the same protections as religious groups.

That is, broadly, what we still have concerns about.

The Convener: That is helpful indeed. Before I bring in Ephraim Borowski and Isobel Ingham-Barrow—which I will do shortly—can I hear from David Bradwell on the same issue?

David Bradwell (Church of Scotland): In answer to the question about the amendments from the Scottish Government, I would say that they are a big improvement. However, the Church of Scotland is broad and contains a diversity of opinions. Some within the church would have supported the original Government approach in that it seeks to overcome hate crime and responds to the needs and wishes of groups that might be more at risk of being victims of it. There is probably a bigger group in the Church of Scotland that is concerned about the potential chilling effect that the original legislation might have had on freedom of expression.

So long as the European convention of human rights still applies, the risk is only that there will be a chilling effect because people will be afraid that particular expressions of religious opinion about other matters might be impacted. However, we do not want to see that tested in the courts; we would rather have legislation that does what it says on the tin, which is protect people from hate crime and not get into the question of freedom of expression. Therefore, we welcome the Government's amendments.

The Convener: Ephraim Borowski, Isobel Ingham-Barrow, Hardeep Singh and Kieran Turner all want to come in. I will go to Ephraim next, who might offer quite a different perspective on some of those issues, if his written statement is anything to go by.

Ephraim Borowski (Scottish Council of Jewish Communities): You are absolutely right in your prediction, convener. First, thank you very much for asking us to elaborate on our written submission.

I will begin to set the scene by saying that the principle underlying all this is in two parts. First, there needs to be a level playing field for all protected characteristics—others have already spoken about that. Not having that has consequences. For example, race is singled out from all the other characteristics in sections 3 and 5. Frankly, it is not that that is a bad thing, but if—as the Faculty of Advocates told the committee last week—the provision about insulting behaviour has never been used, there is no reason to separate it out just for race.

Secondly, we need to be concerned about protecting people and not beliefs or ideologies. That was made clear in an article written by the Equality and Human Rights Commission's Scotland commissioner in *The Herald* a couple of weeks ago.

That was by way of background, but on the specific question of intent and effect, I think that the amendment that has been announced by the cabinet secretary is retrograde and essentially provides a get-out-of-jail-free card for something that we might often see in hate-filled posts on the internet: having posted their hatred, people will then end their comments with "Just saying" or "Just asking." They are now being given a get-out-of-jail-free card because they can say that they did not intend to cause offence, but that they were merely asking a question—about whether the Holocaust happened, for example.

I am effectively speaking on behalf of what you might think of as a collective victim group as, unfortunately, antisemitism is very much on the rise these days. I therefore take the view that it is the victim who needs protected. Yes, freedom of speech is important, but a balancing exercise needs to be done. The right to freedom of speech is not unqualified, and what is appropriate and what is not needs to be made on a case-by-case basis.

There is good precedent for retaining an emphasis on what a reasonable person would regard as a likely effect—that is, not an idiosyncratic individual reaction to something, which is entirely subjective. On harassment, the Equality Act 2010 clearly refers to the "effect" of someone's conduct, and that is the core of the difference between direct and indirect discrimination. The 2010 act says that harassment is

"unwanted conduct related to a relevant protected characteristic"

that

"has the purpose or effect of ... violating"

the other party's dignity. You must have regard not only to how that person sees it; you must have regard to all the circumstances of the case and to what a reasonable individual could have expected. That gives you a middle path that allows you to retain reasonable likelihood without ending up allowing anybody who says, "Oh, I didn't really mean that" simply to get out of jail.

The Convener: Thank you, Ephraim. That is quite a different perspective from almost everything that we have heard in our oral evidence so far, not just today but during the previous two weeks. I know that several members of the committee will wish to take up with you some of those aspects.

Before I bring in committee members, I will turn first to Isobel Ingham-Barrow, Hardeep Singh, Kieran Turner and Neil Barber, in that order.

Isobel Ingham-Barrow (Muslim Engagement and Development): Good morning, and thank you very much for having me. First, I will echo much of what Ephraim Borowski has already said, especially on the idea of intent. Since 2006, when intent was introduced in the English and Welsh contexts for religiously aggravated offences, only a handful of cases have been successfully prosecuted. Unfortunately, that is largely due to how difficult it is to prove someone's intent in a court of law, and that puts the thresholds at an unworkably high level. That would make much of the benefit that the bill would bring redundant, so we are concerned about the inclusion of intent.

However, there are also concerns surrounding freedom of expression, which need to be addressed. Our recommendation for dealing with that is to consider definitions, such as a definition of Islamophobia and definitions relating to other protected characteristics. I have two examples. One concern would be about an inability to criticise religion; there need to be definitions of Islamophobia, antisemitism and so on.

We have given guidelines on how to enact a robust policy-applicable definition of Islamophobia, which would have to include a section exempting the criticising of religion as being outside the realms of Islamophobia. I know that communities have a lot of concern about freedom of religious expression, particularly with reference to religious texts, and about freedom of belief surrounding issues such as sexual preferences, for example, so the definitions need to be robust enough to be policy applicable and written into legislation.

I know that the Parliament has been examining, for example, the all-party parliamentary group on British Muslims definition of Islamophobia for

some time and that Covid has disrupted that process quite heavily. However, in defining what we mean by terms such as “abusive”, “insulting” and “reasonableness” or even things such as “grossly offensive” or “grossly insulting”, we need to be having conversations about what those terms mean rather than enforcing intent, because I think that enforcing intent will seriously damage the effectiveness of the bill.

As Ephraim Borowski has correctly pointed out, the bill has come about due to a need to protect victims, so we need to be thinking about how we are going to maximise that protection without disrupting freedom of expression. Having those conversations around guidelines and definitions of what is included within the remit of “insulting” or “abusive” against the different characteristics is a way to combat that.

What is also important, as a few people have mentioned, is uniformity. Each individual protected characteristic needs to be given attention in terms of the guidelines and what would be included within the remit of “insulting”, “abusive” and so on. At the same time, the protections afforded to each of those protected characteristics needs to remain the same. I am sure that there will be questions later about racial hatred being a separate category with separate protections, but if we fail to have uniform protections, we risk creating what Ephraim Borowski referred to in his submission as a “hierarchy of inequality” that would be quite damaging for certain protected characteristics.

The Convener: The Law Society of Scotland has also been strong on that particular point.

I want to move on to other witnesses, but perhaps you could respond to this question the next time the microphone comes around to you, Isobel. I am sure that we would all agree that these terms need to be defined. The question is the extent to which we would be content to leave those questions of definition to the courts and the extent to which we need to define in advance in legislation what all these terms mean. Perhaps we could reflect on that and come back to it in due course, but I am anxious to bring in the other witnesses now.

Hardeep Singh (Network of Sikh Organisations): Thank you for the opportunity to speak to the committee today. We broadly welcome the modifications around intent. That has allayed quite a lot of fears. However, there are still a lot of concerns about free speech. We believe that the free speech provisions that exist in the bill need to be strengthened. The issue of specificity of language and wording has already been touched on. The existing bill protects religion and sexual orientation only. When it comes to free speech, the protections are limited to “criticism” and “discussion”. We do not think that that goes quite far enough if there is more trenchant speech or more robust discussion around certain issues such as transgenderism, for example, so it would be good for the committee to follow parallel legislation in England and Wales, which was specified in the previous session and earlier, and add words such as “antipathy”, “dislike” and “ridicule”.

In our submission to the committee, we referred to J K Rowling and her staunch defence of women’s rights. We believe that people such as J K Rowling have every right to be able to express their opinions freely without fear of censorship or, if the bill saw the light of day as currently drafted, potential criminal prosecution, so we think that the free speech defence should be extended to transgender issues.

I want to touch briefly on the vagueness of some words in the bill, some of which were mentioned earlier. We believe that a number of words require to be clarified by the committee. The terms “abusive”, “hatred”, “insulting” and “inflammatory material” are subjective and can have a broad interpretation. They are vague and nebulous, which in essence leaves it up to the state or the criminal courts to decide which opinions we can and cannot have.

11:15

It is difficult to imagine a scenario in which someone says something insulting that is not abusive at the same time. There is a danger that just offensive speech could be caught. If you are an activist of any sort and you take the view that speech that you hate is essentially hate speech, you could potentially weaponise the bill to persecute your political opponents or opponents in any area. That is especially bad in the politically volatile times in which we live. Vexatious claimants, or offence archaeologists, will benefit from the bill, as will some lawyers, who will further line their well-upholstered trouser pockets.

On the word “hatred”, there is a really good example relating to the hate crime operational framework that currently exists in law. There was the case of Harry Miller, who tweeted a poem and was subsequently investigated for what was classified as a non-crime hate incident. Harry, who had more guts than most people out there, took that to court and the judge ruled that there is no right to be offended. Nevertheless, Harry was still recorded as somebody who had carried out a non-crime hate incident. That is scary, because it would still come up on a Disclosure and Barring Service check and could prevent people from getting jobs and so on.

Therefore, we think that there should be clarity around the definitions of those words and we

would welcome comments on that from the committee.

The Convener: Thank you—that is helpful.

Kieran Turner (Evangelical Alliance): Thank you for the opportunity to give evidence.

A lot of what we flagged up has already been said. The amendments on intention help somewhat. Our big concern has always been that people could be caught unintentionally by the bill. We all recognise that the bill is trying to tackle issues that are causing victims significant problems and harms due to the stirring up of hatred, but at the same time it is trying to protect freedom of expression. Prior to those amendments being announced, we had huge concerns that people could be caught unintentionally by the bill and that the balance that Ephraim Borowski talked about was not quite right. It will certainly help to have intent included although, obviously, not all the stirring-up offences will have it, because it will not be included in the racial provision. However, those changes are not a magic bullet, and we still have a few other concerns. I will raise two or three of them.

We think that the freedom provisions need to be broadened and deepened. At the moment, there is a hierarchy of defence or protection. The depth and detail of those provisions need to be better. We associate ourselves with the remarks on section 29J and 29JA of the Public Order Act 1986 and some of the terms that are already applicable, such as “antipathy”, “dislike” and “ridicule”. Lord Bracadale originally suggested that a similar provision be included in the bill, so we question why that has not happened and why that wording has not been transferred across. If new offences are being created on the one hand, there needs to be a similar level of defences that enable the right balance to be struck.

In all of this, we need absolute clarity about what the bill is trying to catch and what it is not trying to catch. Therefore, we agree with the points that have been made about the dangers with the definitions of some key words, and we associate ourselves with what Hardeep Singh said on those issues.

We have questions about inflammatory material and the view to communicate that. At what point does possession become a view to communicate? How is that proved? We have questions about the dwelling-place defence. We appreciate that there are two sides to that, but we wonder whether those two things might be put together in a way that would warrant searches of people’s homes and seizure of materials.

Our final point is about the function of the freedom clauses. They must be in the bill to provide clarity. I noted last week’s conversation about article 10 of the European convention on human rights and to what extent the freedom clauses are needed, but we would like to see greater clarity on the offences that the bill will catch. We need clarity about the defences and the freedom provisions.

There is also an important—perhaps symbolic—message in having the freedom sections in the bill. The stirring-up offences are there because it is seen as important to send a strong message about what society will and will not tolerate. In the same way, if we want to protect the principle of freedom of expression—which all of us on the panel would agree with—that principle should apply to defences as well as to offences.

Neil Barber (National Secular Society): Thank you for asking the National Secular Society to take part.

There is a concern about intent, and we welcome the reconsideration of that, which is a step in the right direction. However we do not think that that will be of any comfort to writers; artists or playwrights who anticipate lengthy, expensive, stressful, sleepless months before court cases. It will be of no comfort to them that, if that court case takes place, there is a fair chance that they will get off with it. Those artists will simply not make those points in the first place. The result will be intimidation of free speech from the start.

Lots of people have said that today and that point must be considered. There will be hot-shot young lawyers who want to establish a precedent as part of their life’s work and will say, “I put it to your honour that, while there was no abuse, there was obviously an insult.” Legal sophistry pivots on those nuances. The fact that a court case is required to prove intent is not helpful. It will intimidate free speech from the start.

There is a particular concern about religion. A lot of religious ideas and sensitivities are quite esoteric. That means that you cannot know what is going to be offensive. The blurring of “insulting” and “abusive” creates more legal sophistry. A lawyer could say, “Clearly it wasn’t insulting, but I put it to you, your honour, that there was clearly abuse going on.” Those words, as Hardeep Singh says, are interchangeable. They are too vague.

We would like to see far stronger protection, as there is in England, where there are protections for the expression of antipathy, dislike, ridicule and insult and for the abuse of religion and religious practices. In that context, we can draw cartoons of Mohammed and make movies such as “The Life of Brian”. If Scotland allows only for “discussion” and “criticism”, and as long as we are polite about it, free speech will be intimidated from the start. Of course, we are very glad that the blasphemy law is being repealed, but we are concerned that the

new hate crime bill should not simply replace the blasphemy law.

It is crazy that Scotland can go to the United Nations and say to countries where blasphemy is a much more serious offence, "Gonnae stop executing your apostates for blasphemy," when those countries can turn round and say, "Well, you've got a blasphemy law; what's the problem?"

Ideas are not beyond scrutiny. We have to distinguish between ideas and individuals; there is a blurring of the difference between ideas and identity. Anyone who believes that there is an understanding of the difference between religious identity and religious ideas has never been a secular campaigner. Those things are blurred every day.

We need much stronger protection of free speech. We need to bear in mind, too, that in Scotland today the zeitgeist is quite liberal, but—without getting too science fiction about this—we can imagine that in 20 years' time there is a hellish new regime—

The Convener: I am sorry to cut across you, but we are getting a little further removed from the bill than is ideal, and I want to bring in Ravi Ladva.

Ravi Ladva (Hindu Forum of Britain (Scotland Chapter)): Hello and namaste to everyone. Thank you for inviting me to speak here today and thank you for your time.

Let me say on behalf of the Hindu community that we have issues with the data collection provisions in the bill. We feel, as do other witnesses, that if the bill were passed it could seriously impinge on the intent to modernise hate crime legislation and make it fit for purpose, including by repealing the blasphemy law.

Our concerns about the bill also speak to societal and individual emotional intelligence and our ability to process complex emotions and deal with difficult circumstances and situations, an integral part of which is free speech—the ability to say what we think and how we feel is important, whether or not people agree with that.

Let me give a Hindu—and a personal—example. I subscribe to a philosophical school, Samkhya, which at its core is atheistic but resides in an orthodox framing of Hinduism, along with the most devotional aspects, including the Hare Krishna, for example. That is only possible through dialogue, which builds an understanding and removes ignorance. I opened with the word "namaste", which is a Sanskrit word that, in essence, recognises divinity in everything and everyone. That level of oneness is something to which we can aspire.

There are grey areas in the bill, which would impact implementation and enforcement. For us, it speaks to an essential part of our social contract as citizens of the UK and Scotland, which is about being good to one another. I do not want someone to be good to me simply out of fear of what a piece of legislation can do, whether that is tie them up in lawsuits or lead to consequences such as prison. The journey to being good to one another breaks down ghettos and creates communities—and prosperity.

We do not want to arrive at a situation in which ghettos of the mind are created in individuals and groups and people's personalities are repressed. We have seen that with lesbian, gay, bisexual and transgender people, who, for decades, could not be the best versions of themselves; they could not be who they were—and we know the impact of that, in terms of suicide rates and so on. We do not want to move in that direction. Therefore, we should look to have conversations and build programmes that facilitate deepening conversations and bonds.

This discussion reminds me of a passage from one of our holy texts, the Bhagavad Gita: we are kept from our goals not by obstacles but by a clear path to a lesser one. Although we welcome aspects of the bill, we think that we should aim to address the root causes of hate speech—those things that we do not yet understand. To that end, I hope that the discussions about the bill can be broadened out—[*Inaudible*.]—with support from the bulk of the public, so that we can engage and develop the conversation further.

The Convener: Thank you, Ravi; that is very helpful.

We all need to keep an eye on the time; if we have short, sharp questions and answers, we will get through the business.

11:30

Annabelle Ewing: Good morning. We are having very interesting discussions. I want to turn to the issues of religiously inflammatory material and racially inflammatory material.

Possession of religiously inflammatory material has been an offence in England and Wales since the Racial and Religious Hatred Act 2006, but I do not recall any evidence of religious books ever being destroyed as a result of the act; the same goes for the possession of racially inflammatory material, which has been an offence across the UK for decades. I agree that the issue is worth discussing, but I wonder about the extent to which discussions in the context of the Hate Crime and Public Order (Scotland) Bill are informed by the experience elsewhere, including in England and Wales.

I put that question, in turn, to Isobel Ingham-Barrow, Anthony Horan, Ephraim Borowski and David Bradwell. I appreciate that many others might have a view, but we will start with those witnesses and take it from there.

Isobel Ingham-Barrow: As I said, we need a clear definition in the guidelines of what constitutes "inflammatory". On top of that, a number of concerns surrounding possession and disposal of such materials need to be discussed—for example, for the purposes of academic research, people often own materials that they do not agree with. Those areas are in desperate need of discussion. Just because there is no evidence that, under the 2006 act, such materials have been disposed of, that does not change the fact that it could happen, so the issue needs to be given careful consideration.

To touch on the convener's earlier question, the definitions and—more importantly—the guidelines with regard to what sits within the remit of our understanding and what activities are included within the scope of abuse or insult against certain characteristics need to be embedded within the legislation, so that it is not a subjective decision for the courts to make. Does that answer your question?

Annabelle Ewing: Thank you. I am just listening to the responses. I do not get the impression that people are clamouring for the 2006 act to be amended to remove the provision for the destruction of materials, but perhaps that is an issue for another day.

Anthony Horan: Just because England has experienced the issue in a particular way does not mean that it will play out in the same way in Scotland. As I set out in my first response, the term "inflammatory" needs clarification; what arouses anger or hostility in each individual is subjective, and we are concerned about that. Again, some clarity around the definitions might help to alleviate concerns.

As the convener mentioned earlier, where the line is between what the Parliament should legislate for and what should be left to the courts to decide in interpreting that legislation is probably a matter for political prudence, but it is extremely important that we try make that line clear, because the legislation can go only so far, and then we need to leave it to the deft touch of the judiciary to interpret the terms. That might sound like a bit of a get-out, but I think that it is a matter of political prudence.

We still have that overarching concern around the definition of "inflammatory".

Ephraim Borowski: I echo what others have said. "Inflammatory" sounds as though it is a subjective time, but it is being used in the context of law. As I said earlier, as I need hardly tell the committee, lawyers are very used to handling terms that sound as though they are subjective but which are, in the legal context, objective, because the test that conduct has to satisfy in order to reach that standard is what the reasonable person would regard as meeting that standard. I might have less concern, but I would not stand against the idea that defining "inflammatory" in the bill would be an improvement.

David Bradwell: I agree with what everyone has said about clarity of definition. I can use the example of documents in the life of the Church of Scotland, such as the Westminster confession of faith, which was agreed in the 17th century. It is an important description of what it means to be a reformed Presbyterian Christian in Scotland, but parts of it could very well be seen as inflammatory, as inciting hatred or as causing offence to Roman Catholics. In its current usage and through our partnership ecumenically, it is still part of our DNA as a church. We live with it and with our partnerships and relationships. How might such a document be caught by the provisions? Clarity of definition would be very useful.

Annabelle Ewing: I see that three other witnesses have requested to come in. I assume that that should be okay, if everyone is brief.

Hardeep Singh: I agree with Anthony Horan about the need for clarity. It would be extremely helpful if the committee could look at what the criminal threshold for inflammatory material is before that is tested in a real court case. As we say in our submission, we agree with many of the Christian denominations that there are concerns about whether the Bible or other holy texts could be considered as offensive materials. Verses that refer to homosexuality as sinful could be caught by the bill. However, we also made it very clear in our submission that verses in holy texts that incite violence or hatred towards non-believers and that are used for the purpose of stirring up hatred should absolutely fall within the scope of the bill.

We would like there to be clarity about whether, for example, there would be an exemption for an academic in a university who shared "Mein Kampf" with undergraduate students, or for the work of Germaine Greer, which would almost certainly be considered to be inflammatory material by some transgender activists. It would be nice to have some clarity from the committee on such questions.

The Rev Stephen Allison: I agree with a lot of what has been said, but I will make a couple of additional points. Annabelle Ewing referenced the equivalent provisions in England and Wales, which have much stronger freedom of speech protections. In order for the issue of inflammatory material to de dealt with well, stronger protections

would be required in Scotland relating to freedom of speech, ridicule and dislike—all the stuff that has been mentioned previously. There are also issues relating to the bill saying that something has to be offensive to a reasonable person, and to testing that.

A supplementary issue is that what is inflammatory, or what offends or abuses people, changes over time. We have seen that recently in relation to people who have written historical material or novels. Even people such as David Hume are suddenly being attacked for their views on slavery. Given that people's views and what is acceptable in society changes over time, there might be aspects of older inflammatory material that we would strongly disagree with today, but we have to see such material within its historical context. In the Free Church of Scotland, we would say the same about the Westminster confession of faith: it has to be read in a historical context.

Our concern is that, over time, people could see things as abusive and make more use of inflammatory material than may be the case today.

Ravi Ladva: I echo what the Rev Stephen Allison has just said. In history, we see peaks and trends, and expansions and collapses of liberalism and conservatism. There is a possibility that, if things are not well defined, we could be cutting ourselves off from lessons from the past. [*Inaudible*.]—and the language that is used. I do not know how everybody else feels, but we would welcome the opportunity to see that before it is used in a court of law, in a test trial or anywhere else. That is the point that we would like to make.

Annabelle Ewing: Thank you.

The Convener: Thank you very much. Annabelle, I hope that you feel that people have done justice to your question.

I am going to bring in Liam Kerr for a quick supplementary question on the back of that, and then Liam McArthur. Neil Barber, we will get to you soon.

Liam Kerr: My supplementary is directed at David Bradwell.

In your remarks, you said that a document could be inflammatory to Catholics. Given that section 6 of the bill provides powers of entry and that, in its submission, the Free Church of Scotland commented that only two or three complaints might be sufficient to apply for a warrant, can you foresee a situation in which the police might enter a church in order to seize and retain the offending publications that you have referenced?

David Bradwell: I cannot, because I do not know much about that aspect of police powers and criminal law. It might be better to direct that question at the police or a legal expert.

Liam Kerr: No problem—thank you.

The Convener: We took extensive evidence from legal experts and the police last week, so unless anybody else wants to come in, I think that we can leave that one there.

Liam McArthur: Good morning. In answer to the convener's original question on stirring-up offences and intent, a number of you mentioned your desire for stronger protections for freedom of expression; Annabelle Ewing referred to some of the safeguards in that respect that are provided in the law in England and Wales.

The Cabinet Secretary for Justice has stated his willingness to consider extending and deepening the protections for freedom of expression. I do not want anybody to go over ground that they have already covered, but do you have any comment on that? What would you wish to see in that respect? Perhaps we can start with Neil Barber and then go to Ephraim Borowski for a slightly different slant.

Neil Barber: As I have said, we would certainly like to see better protections for free speech, in keeping with those in England, where expressions of antipathy, dislike, ridicule, insult and abuse go much further than the quite polite discussion and criticism that we are allowed in Scotland.

On the communicating of hateful material, it occurs to me that Gideons groups send copies of the Bible into schools. We have already discussed some of the texts in the Bible that the Christian Institute recently referred to as "unfashionable".

On the issue of a hierarchy of protected characteristics, we saw that in Birmingham, where parents said, "We're not allowed to discriminate against gay people, so you're discriminating against us by disallowing us from discriminating against people."

I would be interested in hearing how the cabinet secretary would respond to incidents such as those that have occurred in France, where people have died for drawing cartoons of the prophet Mohammed. Would that be described as abusive behaviour and as a hate crime? Would that be permitted under the proposed legislation?

11:45

Liam McArthur: I would be interested to hear Mr Borowski's take on my question, given his earlier comments in relation to intent.

Ephraim Borowski: I have a couple of points to make. First, I will comment directly on what has just been said. There has been a discussion about the use of the phrase

"evinces malice and ill-will"

and Lord Bracadale's suggestion that it should be replaced with "expresses hostility". I understand

"malice" and "ill-will" to be ordinary English language expressions that are a lot stronger than mere hostility. As somebody said at last week's meeting, some of us live in a world where Victorian vocabulary is fairly commonplace, so I am not particularly bothered about "evinces" being replaced with "expresses".

It is clear that it should be recognised that speech is behaviour and that the same protections that people have from physical assault should exist for verbal assault as well. That requires a balancing exercise as regards intention, negligence and accident, as well as the issues to do with effect, which we talked about earlier.

Secondly, we mentioned a couple of times in our submission an idea that might cut through a lot of this—the idea, which is remarkably radical for us, that we should take out the list of protected characteristics and should protect anybody who is attacked on the basis of their belonging to any identifiable group, whether people with red hair or cyclists.

Why do we give protection to racial groups? That leads to us having to redefine race in the Equality Act 2010 to include other categories. We then have to argue about whether those groups are defined by the census or by people's self-ascription. There are inconsistencies—for example, Jews and Sikhs are a race but other religions are not—and there is an argument about whether Gypsy Travellers are a race and so forth. We should not need to have that argument if we spoke in complete generality about attacks on people because of characteristics that they share with a group. What defines hate crime—this can be found throughout the literature, all the way back to the Stephen Lawrence inquiry—is that it undermines individuals because of their membership, or perceived membership, of the same group as the initial victim.

Liam McArthur: I thank Mr Borowski and look forward to the stage 2 amendment on protection for cyclists.

Ravi Ladva: What Ephraim has mentioned reminded me of a case in 2019, in which vandals attacked a Hindu temple in Walsall and destroyed a number of idols and statues that were placed outside. It spoke to the fact that there are aspects of each of our faiths that proselytise and actively seek new converts. Can the act of a Jehovah's Witness or a Hare Krishna who preaches outside be classed as a hate crime because it is seen as hateful towards another person's particular faith?

Extending further from there, that case speaks to the danger—if not a well-defined possibility—that people could retreat within themselves and from society because they are afraid to express their particular articles of faith, because those particular feelings mandate that they should go out and preach their truth to the world.

The Rev Stephen Allison: Lots of people have talked about the provision about the widening of religious freedom of expression, and I know that lots of people have said, as we did in our submissions, that more protected characteristics should be covered by the freedom of expression provisions, such as the transgender stuff. I would like to add another area that we are concerned about. The current wording of the sexual orientation provision focuses very much on practice and does not talk about some of the wider issues of identity. A concern that we have as a church is that it does not mention any ability to criticise and make comments about same-sex marriage. Given that religious groups have protections that enable them not to conduct same-sex marriages and to hold views against same-sex marriage, we think that there should be some reference in the bill to that, as there is in the equivalent English legislation, which is the Public Order Act 1986.

Hardeep Singh: We would welcome the committee's thoughts on the issue of considering extending a list of free speech provisions, for example, for journalistic freedom.

The Convener: Thank you for those thoughts on the free speech provisions. We will now move on to a line of questioning that John Finnie, who has been waiting patiently, is going to take up.

John Finnie: Good morning. As in previous sessions, I would like to talk about aggravations. There has been a broad welcome for the statutory aggravation process being maintained. In the first instance, I would like to direct a question to Mr Borowski, about an interesting aspect in his evidence in that regard.

Mr Borowski, you say that you are supportive of that principle, but you highlight what you refer to as one drawback of the statutory aggravation model—perhaps a self-evident one—which is that there must be something to be aggravated. You detail a number of unpleasant incidents that you are aware of, and you go on to say:

> "We have experience of a prosecution for 'racially aggravated conduct', and we would urge that proposed legislation should make this option available for incidents such as those we have described".

Do you feel that the scope of the bill is inadequate?

I would also like the witnesses to give a general view of Lord Bracadale's recommendation that the racially aggravated harassment offence should be repealed. That has been maintained by the Scottish Government. If members of the panel feel that that is necessary with regard to race, why

should it not be necessary with regard to the other characteristics?

Ephraim Borowski: You put the point absolutely precisely that, in order to have an aggravation, there has to be an offence that was aggravated. However, if you have, unfortunately, to report what you regard as a hate incident to the police, they are as likely as not to categorise it as an incident and not as a crime. In order to have the perpetrator prosecuted, there are lots of hurdles. First, you have to persuade the police that it is a crime, then the police have to persuade the procurator fiscal and, if necessary, a procurator fiscal has to persuade Crown counsel and so forth, and then you have to persuade the court, if it gets to that stage.

Our concern is with repeated incidents, not just one-off incidents that could be put down to stupidity or whatever. It relates to instances where a particular individual has undertaken a course of conduct that involves low-level harassment, which might actually have a relevant context. One of the examples that we gave in our submission concerned the harassment of someone who had been a previous complainant and was subjected to repeated harassment over a period of time. None of those individual incidents would amount to a crime, and, therefore, none of them can be classed as aggravated and taken to court on that basis.

There needs to be specific provision—a sort of Moorov doctrine, as it were—for hate crime, whereby, if somebody consistently indulges in low-level incidents, particularly if they are directed against the same victim or victim group, they can be aggregated into something that would itself constitute a crime that could then be aggravated. That is the answer to your first question.

The answer to your second question relates to what I said earlier about having a general view of a victim group. Hate crime is a crime that is motivated by the victim's membership or perceived membership of a particular group, whatever the group is. That sits alongside the principle that has been expressed by me and others today, and by the Law Society of Scotland and the Faculty of Advocates last week, as well as by others, that there should not be a hierarchy of protected characteristics, and that the same protections should apply to all.

Isobel Ingham-Barrow: Obviously, I agree with everything that has just been said. I want to reiterate the importance of those harassment provisions being extended to cover all protected characteristics. That is important, first, due to the hierarchy of inequality that we spoke about earlier, but also because—to take the case of Muslims as an example, because that is MEND's area of expertise—there needs to be an understanding of the fact that certain forms of hatred such as Islamophobia are a form of racism and that certain groups, such as Muslims, are not covered by existing provisions on the ground of race. Islamophobia manifesting as racism means that Muslims have become a racialised group. For police and prosecution services, it is often difficult to decide on how to move forward with the case in that regard. Obviously, that impacts on victims and communities. Therefore, I fully support the extension of protections across all protected characteristics.

Hardeep Singh: I want to make a comment around the aggravation of offences by prejudice. We think that the provision in the bill about presumed membership and perceived religious affiliation is positive. Ever since 9/11, Sikhs and many others who are described for the purposes of this argument as the "Muslim-looking other" have faced a backlash in retribution for terrorist outrages across the world. To illustrate that, I can give you an example based on freedom of information requests that we have made of the Metropolitan Police in London, which show that, in 2016, 25 per cent of victims of Islamophobic hate crime recorded by the Met were non-Muslims or people of no recorded faith. The majority of those non-Muslims were Christians, followed by Hindus. The figure also included Sikhs, Buddhists, Jews, atheists, agnostics and others.

There is an issue around clarity in that regard. The bill says that, in order to substantiate aggravation by prejudice,

"Evidence from a single source is sufficient to prove that an offence is aggravated by prejudice."

We would like clarity from the committee about whether that involves the same kind of criteria that are in the College of Policing's hate crime operational guidance, which says that the reporting of a hate crime must be based on the perception of the victim or any other person, and that the police cannot challenge that perception, and no evidence is required. We hope that the test that the bill is talking about is more of an objective test, because it could potentially lead to a sentence uplift.

John Finnie: I am sure that that clarity will come at some point.

12:00

Neil Barber: My partner is a social worker and I appreciate that, when a hate crime is committed against somebody, its effect is much more damaging on them and on the community of which they are a part, so it is right to treat that as a serious crime. However, I think that Scots law provides enough protection through section 38(1)

of the Criminal Justice and Licensing (Scotland) Act 2010, which talks about causing

"a reasonable person to suffer fear or alarm".

That is adequate protection.

We must look at the difference between threatening people and abusing people. For example, people can believe that marriage equality is inappropriate—although I do not share that belief—as long as they do not ship up at gay weddings with a placard. People can oppose abortion as long as they do not guilt trip women outside clinics. There is a difference between insulting and threatening, and Scots law provides adequate protection against being threatened.

The Convener: John Finnie is indicating that he thinks that his questions have been appropriately answered, so we will move on to Shona Robison.

Shona Robison: I have two questions on the aggravation of offences. You will be aware that a core method in the general approach to dealing with hate crime is the continued use of statutory aggravations, which has been broadly welcomed. Does anybody differ from that view?

On sentence uplifts, Mr Singh mentioned that he would have a requirement for more transparency in sentencing, which involves defining the effect of the aggravation on the sentence. Do the other witnesses agree with that? Is that practical? We heard from some in the legal establishment how challenging achieving that in practice would be.

Hardeep Singh: I am not a lawyer, but I think that clarity is required about the source of evidence. Under the hate crime operational guidance, recording an act as a hate crime depends on the perception of the victim or any other person. Such clarity is required. Whose evidence are we talking about when we talk about a single source of evidence to substantiate—[*Inaudible*.]

Clarity on that point would be welcome.

Shona Robison: Does anyone want to comment on the general point about the continued use of statutory aggravations? It looks as if there is consensus on that.

The Rev Stephen Allison: On the evidence and the continued use of aggravations, we are encouraged that an aggravation requires the underlying offence to be proven with corroboration, which removes the subjective element. It is of course difficult to prove the hatred element. Having a single source of evidence makes that a bit easier but, as a former lawyer, I know that contrary evidence could always counteract such evidence. The standard is not as high as requiring corroboration, but we are content because corroboration is required for the underlying offence.

What is really affected is the sentencing. Judges always take the aggravation into account—the bench comments all the time on how bad a situation was because of the particular circumstances of the offence. The approach makes it easier for judges to justify decisions and explain that they have increased sentences because of the hatred aspect.

Ephraim Borowski: I have a brief point about how an aggravation is recorded; it relates to an issue that runs through the criminal justice system. It is not good enough to record the relevant protected characteristic, as listed in the bill. It is necessary to know, for example, which race or religion is targeted. Frankly, without that, the statistics are meaningless. It is not possible to identify patterns and trends simply by knowing which of the listed headline characteristics is involved.

The Convener: Ravi Ladva wants to come in, after which we will move on to a new line of questioning with Rona Mackay.

Ravi Ladva: I have a point to make about situations in which the aggravation is a result of ignorance. Many Hindu articles of faith are taken out of context or misconstrued. Will that now be classed as a hate crime? I think that there is scope for organisational awareness and empathy to be built into the bill, whereby people will be protected if it can be proven that what they said was said out of ignorance. I do not know how other witnesses feel about that, but it is important to us that there is a cure and prevention element to what the bill does.

Rona Mackay: In the interests of time, I will direct my questions to Isobel Ingham-Barrow, Kieran Turner and David Bradwell. I want to return to the subject of the bill's different approach to race.

Isobel, you said earlier, and it is mentioned in your submission, that 83 per cent of Muslims have experienced Islamophobia and that you want it to be treated as a separate category. At the same time, however, you are arguing for the bill to be uniform and for it not to create a hierarchy of characteristics. Could you clarify your thought process, please?

Isobel Ingham-Barrow: When we say that Islamophobia needs to be recorded as a separate category of hate crime, that very much relates to the way in which the police record incidents. As I said earlier, there is often confusion about whether to categorise an offence as being racially or religiously motivated, and causes a problem particularly when it comes to Muslims—for

example, as was mentioned earlier, Sikh communities are often targeted.

In forces such as the Met Police, there is a selection of check boxes whereby officers can tick all the categories that the incident could fall under. That approach is supposed to be uniform across the whole of England and Wales but, in practice, it does not always happen.

In England and Wales, antisemitism is already recorded as a separate category, and we believe that Islamophobia should also be, purely because, when it comes to analysing data and understanding the scale of the problems, it would give us an accurate picture of what is going on on the ground, and allow us to create positive and meaningful policy in such areas.

We are not arguing that there should be a separate protected characteristic to deal with Islamophobia; our point is purely to do with how the police record such incidents.

Rona Mackay: Thank you—that clears that up.

I will move on to Kieran Turner. In your submission, you say that you want the word "insulting" to be removed, but you also say that you do not want to send a signal that protection against racism is being weakened in any way. Could you expand on that, please?

Kieran Turner: Yes, of course. This is a very difficult area, and I know that the committee has covered the different threshold levels of the term "insulting" during the past few weeks. There are two main challenges with the inclusion of "insulting" in the bill as it stands. One relates more to nationality and nationalism and perhaps less to what we might all associate with racism. The concept of insult could overlap with political debates, such as the independence or Brexit debates. The term "insulting" might be carried over and used in those scenarios.

The other area is defences, which I touched on earlier. Proof of intent is now required for the new stirring-up offences, which means that there is a conversation to be had about what happens with the reasonableness test. That is not the case with insult, which leaves us with a question about vagueness and the burden of proof on the accused, or the partial burden of proof on the reasonableness test. Whereas sections 18 to 21 of the Public Order Act 1986 set out specific defences that are required to meet that threshold, there are currently no such defences in this bill.

If the committee decides that "insulting" is to stay in, we would argue for a more specific defence to ensure that people are not caught up in that by mistake. I appreciate that it is a difficult area and there are understandable views on both sides but nationality and the defence are particular challenges.

Rona Mackay: Context would always be important in those cases. That would always be considered.

David Bradwell, you say in your submission that the bill should not refer to "insulting" but to "grossly insulting" language. You say that that might clarify things. Please expand on that.

David Bradwell: The witnesses today are agreed that the right to insult and be insulted and the right to cause offence should be acceptable parts of freedom of expression. It is about where you draw the line around the right to hold strong beliefs that may not fit with the mores of wider society to the extent that they can be seen to be causing anger, upset and hatred.

Because the witnesses represent religions and belief organisations, I will also say that race and religion are often used as proxies for each other in hate crimes. Race is treated differently in the legislation, which is a problem when a crime might be directed at someone because of their religion or their race.

I do not know whether the committee plans to hear from groups representing people who might be more frequent victims of hate crime. The Church of Scotland is in quite a privileged position in that we are not often on the receiving end of hate crime. Within our membership however, we have disabled, elderly or LGBT people who will have questions about why race is treated differently. It would be useful for the committee to explore the reasons behind that. I do not have an answer, but I am glad that you are asking the question.

Anthony Horan: To build on what Kieran Turner said, and given the evidence that the committee heard last week from Lord Bracadale, the dean of the Faculty of Advocates and Michael Clancy, there is a clear suggestion that the term "insulting" should be removed from the bill or that it is not necessary. We support that. The term is open to wide interpretation.

To expand on what Kieran Turner said, nationality and citizenship are covered under the provisions for race. I do not think that people appreciate what including that could criminalise. For example, in recent years, we in the UK have been no strangers to hotly contested referenda, which cause robust and sometimes heated exchanges on the future constitution of the country. There could be a hotbed of insults, all of which could potentially be prosecuted under the provision. Last week, Dr Andrew Tickell said that we live in a culturally contested space, which was a very good point. He is absolutely right and the bill needs to be alive to that.

12:15

Hardeep Singh: Although we did not comment on the point in our submission, it strikes me that, if "insulting" is used for race only, it could be construed as creating a hierarchy, which suggests a lower criminal threshold. The example that is helpful to illustrate that is the case of a gurdwara—a Sikh temple—in Glasgow that was vandalised with anti-Muslim graffiti in 2015. I will not mention one of the words, but the subsequent words were "no Sharia", with a Nazi swastika scrawled alongside. That is potentially religiously and racially motivated, and I do not see why one should be treated any differently to the other.

Ravi Ladva: This point comes off the back of the tweet that was sent out by Lord Kilclooney yesterday, and it pertains to section 3(6)(a) of the bill, which defines "a person's behaviour". Picking up on Ephraim Borowski's point about protecting victims, from the Hindu perspective, during the past number of decades, we have been expected almost to take it on the chin and turn the other cheek when certain things about our community have been portrayed. It is worth including in the bill protections and support for those smaller communities that exist within our country and society, whether that be legal aid or any other kind of support, such as emotional support, that they require.

The Convener: I will give Liam Kerr the chance to come in at the end and ask any follow-up questions. In the meantime, I will move on to Annabelle Ewing, who wants to ask some questions about hate crime characteristics.

Annabelle Ewing: I have questions about the non-inclusion of the characteristic of sex in the bill as regards both aggravated and stirring-up offences. In the interests of brevity, I will go to Neil Barber, Kieran Turner, Anthony Horan and Hardeep Singh. Do you wish to make any specific comment on that? Is the parallel work vis-à-vis a stand-alone offence of misogynist harassment the better path, or would there be a gap?

Neil Barber: There are people better informed than me to comment on those issues. Although I have personal opinions, it is beyond the remit of the National Secular Society. However, I note the notion that the law is putting out a message that will not filter down at any real level and will simply be a guiding message. That is useful, but we must remember that people will take that message and employ it to their own ends.

Kieran Turner: Similarly, my initial point is that others are more qualified than we are to say whether a stand-alone offence or part of the bill would be the most effective way of prosecuting in that area. Nonetheless, if the bill is seeking to consolidate and make clear different areas in relation to hate crime and, broadly, to follow the characteristics in the Equality Act 2010, it seems striking that sex is not part of that.

Anthony Horan alluded to the culturally contested conversations that are going on, and thinking about the conversations around the Gender Recognition Act 2004 and its reform, it seems that the bill covers and gives protection to one aspect of that—transgender identity—but it does not cover sex or biological sex. The question then is whether the bill really is seeking to consolidate protections and give everyone equality of protection. Related to that is the framework within free speech, debate and conversation around all those issues. The committee might want to reflect upon that question in its consideration of the bill.

Anthony Horan: The approach that has been adopted appears to be a bit fragmented, in that sex has been dealt with differently to other protected characteristics, which appears to be at odds with the overall principle of consolidation. Given the existing set of protected characteristics, I do not see why it should not be included, but of course that would be a matter for the working group on misogynist harassment to examine in its future deliberations.

I want to pick up on comments that were made in the earlier evidence session. Reference was made to pro-life groups carrying out vigils outside hospitals. I am sure that the groups that organise such events will speak for themselves, but I am not sure that they involve any incidents of harassment, abuse or threatening behaviour. However, that example highlights an important point about balancing fundamental freedoms, which we must take into account. In such situations, it is important to bear in mind freedom of assembly and expression, but those must always be balanced against the rights of people to go about their daily business without incurring harm.

Annabelle Ewing: Indeed. That is always a balancing act, is it not? Our discussions this morning have demonstrated that well.

Hardeep Singh: We have not considered the issue in our submission. My own comment is that the decision should be left to the experts in the working group, but consideration should also be given to other characteristics that could be included. In England and Wales there have even been conversations about whether protected groups should include people with ginger hair or those from subcultures such as goths. I am sure that other communities would also like to take part in such conversations.

Isobel Ingham-Barrow: Most of what I was going to say about consolidation has already been

covered. It does not seem to make sense that sex should not be included.

I reiterate the point about the need to protect people's rights when there are conflicts between those of different groups of people. Perhaps there needs to be greater discussion about how abuse against different characteristics intersects. For example, from our own experience, we would highlight that there is an interplay between misogyny and Islamophobia. Islamophobia is a gendered phenomenon and misogyny definitely plays into the attacks that we see. Women are overwhelmingly the victims of particularly violent instances of hate crime against Muslims. There needs to be an understanding of the intersection between instances of hatred directed against people with different characteristics.

The Rev Stephen Allison: Isobel Ingham-Barrow has just said much of what I wanted to say about the conflict between protected characteristics, which is certainly an issue. The exclusion of sex, together with the inclusion of transgender, creates a hierarchy that suggests that one characteristic is more valuable than the other.

There have been debates and discussions over gender identity issues, and the lack of a free-speech clause on transgender plays into that. There is a lot to be said for sex being treated on the same level as transgender issues.

Annabelle Ewing: Thank you all for your thoughts.

The Convener: We will move to James Kelly for a slightly different line of questioning.

James Kelly: Good afternoon, panel. Do you think that any additional measures—legislative or otherwise—should be introduced to protect the victims of hate crime? I would like Hardeep Singh, Kieran Turner and Anthony Horan to answer that question first. If anybody else then wants to come in, they can do so.

Hardeep Singh: I do not have any suggestions for any extra provisions to protect victims of hate crime. I am sorry to go slightly off piste, but I suggest that we should have a dwelling defence to protect free speech in conversations that happen in the home, as there is in parallel legislation in England and Wales.

Kieran Turner: I do not have specific examples to add, but I flag up the ability of all of us around this table, who represent the diverse groups that we are in, to tackle hatred within our own communities whenever that manifests itself. It will not be lost on the panel that we are having this evidence session in the middle of Scottish interfaith week. Currently, many of the panellists will regularly be in online forums, engaging with Government on various issues. I advocate non-legislative approaches to tackling the issue in general, as well as speaking—as I am sure that you will do—to groups for those who have been victims of hate crime to see what other support can be given to them.

Anthony Horan: Like Kieran Turner, I do not have any specific examples. However, I think that it is very important for Parliament to listen to the wisdom of victim support groups and to take full cognisance of their recommendations, because they are the people on the ground. They hear what victims are experiencing, and we would certainly want to support that.

More broadly—Kieran Turner touched on this—we all need to engage our social responsibility and discourage hateful behaviour, which will, we hope, reduce crime in that area, and we need to support the victims of those crimes.

James Kelly: Okay. Thanks for those answers.

The Convener: Neil Barber, David Bradwell and Isobel Ingham-Barrow want to come in on that issue, if I have read that right.

Neil Barber: It will not surprise members to hear that, as a secular campaigner, I feel that criminalising hate speech from silly young laddies on football terraces when they have gone to them-and-us schools for 16 years is a gross act of bolting the stable door. Let us look at changing hate speech based on those very basic things, and let us not criminalise what is a manifestation of the sectarianism that is Scotland's shame.

12:30

Isobel Ingham-Barrow: I have a plethora of potential policy developments and activities that could help in those areas.

On the legislation, one of the submissions mentioned anonymity clauses. I believe that they would help victims to come forward to report their experiences.

I have already mentioned the recording of Islamophobia as a separate category of hate crime by the police. There are also issues to do with police engagement with local communities, increasing diversity among the force, and increased understanding.

There are also wider societal issues, such as encouraging political maturity, which involves issues such as political representatives not using divisive language in their statements. That is something that we should be looking into.

We must think about the way in which school curriculums can encourage the decolonisation of education and narratives, develop a sense of shared history, and highlight the contributions of

different minority groups to society. That is important at the moment. This is Islamophobia awareness month, which is all about encouraging the recognition of the challenges that Muslim communities face as well as the contributions that they have made to society. Within that, we can talk about a recognition of the lasting impacts of colonialism and so on.

We must think about policies to do with bullying in schools and put in place teacher training on how to deal with bullying that is motivated by issues around race and religion and with other forms of hatred-motivated bullying.

Time is short, so I would be quite happy to send to the committee a long list of recommendations of wider measures outside the bill that could be implemented to help with our approach to hate crime.

James Kelly: Thank you for that comprehensive answer. It would be useful to get a submission on those points.

David Bradwell: I would be happy to supply the committee with examples of work that the Church of Scotland is doing, either supported nationally or delivered locally, to tackle hate speech, to deliver anti-sectarianism initiatives, to overcome violence against women, and to promote intercultural dialogue and refugee integration.

On the role of Government and Parliament, the Scottish Government runs the one Scotland campaign, which is clear about the direction that it would like society to go in. I have had some experience of the new Scots refugee integration strategy, which brings together everyone who might have an involvement in that issue—representatives of refugee organisations, statutory agencies and voluntary groups that offer support—with civil service and Government backing. That might be an interesting model to consider when policy makers are developing Government strategies and funding opportunities for community work, as well as developing political statements with regard to hate crime. Legislation is necessary, but the first step is to be made with people in communities.

James Kelly: Thank you. Those are good examples. Again, if you have further information, it would be useful for the committee to have that.

Fulton MacGregor: I have two questions. One is specifically to do with sectarianism; the other is more general.

The bill does not include any specific provisions on sectarianism. Do the witnesses think that the hate crime characteristics of race and religion are suitable with regard to labelling offending that is motivated by sectarianism? Should more, or perhaps less, be done in that area?

In the interests of time, I would like Anthony Horan and David Bradwell to answer that question although, if anyone else wants to come in, they can put a wee R in the chat box.

Anthony Horan: I tend to go with Lord Bracadale's view on that. Sectarianism is generally adequately covered under existing offences and aggravations. I think that Lord Bracadale said that there is no gap in the law. Although we acknowledge that there is a problem with sectarianism and that we all have a role in tackling it, it is perhaps better to be a bit more explicit to ensure the fair labelling of sectarianism. If it is anti-Catholic, we should say that it is anti-Catholic, and if it is anti-Protestant, we should say that it is anti-Protestant. As Fraser Sutherland said earlier, sectarianism does not exist only between Catholics and Protestants; it also exists between other faiths and religious groups. I defer to Lord Bracadale, and I would rely on the existing criminal law provisions.

An important point to make is that nobody learns sectarian behaviour from their priest or minister on a Sunday.

Fulton MacGregor: Thank you. That is a powerful point well made.

David Bradwell: I am in full agreement with what Anthony Horan has just said. Members can rest assured that we will be monitoring the issue in the future, as we have done before. It might even be a subject for a future Justice Committee inquiry. Assuming that the bill is passed, we might do some more investigation into how it is working in a few years, particularly on the issue of sectarianism.

Ravi Ladva: I want to make a point on the back of the points that have been made about alternatives, and on the point about sectarianism. I am from Birmingham and am relatively new to Scotland, and I was relatively oblivious to some of the fault lines that exist in society here. I am aware of the fault lines that exist in my background and in cities, for example. One of the things that we could look at is the provision of funding to our respective organisations to do consistent outreach work, break down some of those barriers, engage with people in different areas—such as sport, food and other aspects of our culture—and try to bridge some of the gaps and bring people together along different lines. That is a serious alternative that we should consider.

Fulton MacGregor: Excellent. That is a very good point on which to end that particular line of questioning.

I have one further question, although the witnesses should not feel the need to answer it, because some of it has been covered with earlier questions. It is about general hate crime

characteristics. Are any of the witnesses concerned about the way in which various hate crime characteristics have been defined in the bill? Are there any characteristics that should be added? We have already discussed sex, for example. Is there anything else that could be added, or do you have any other concerns about the characteristics?

I am not asking any specific witness that question. If you feel that you have already had a say on that, that is okay.

Everybody seems to be content, convener, so I am happy to pass back to you.

The Convener: Thank you for giving the witnesses the opportunity to come back on that.

Liam Kerr had a couple of supplementary questions that we did not get to earlier. It does not matter if we take them out of sequence; it is important that everybody gets to ask what they want to ask. Please feel free to ask what you want and to wrap up.

Liam Kerr: I have one question on an issue that we have not explored yet, which is the abolition of the offence of blasphemy in part 4 of the bill. Given where we are with the time, I will ask the question in the negative; any witness who wishes to jump in can then do so. There appears to be wide support for the abolition of the offence of blasphemy. Are any of you not supportive of that, or are you concerned about that abolition or about how part 4 of the bill is drafted? If that applies to you, put an R in the chat box and we will come to you.

As nobody has done that, I will hand back to the convener.

The Convener: I will resist the temptation to make bad jokes about self-censorship applying to the witnesses, none of whom wants to object to the abolition of the offence of blasphemy. Indeed, the written evidence that they sent the committee is clear on that.

I thank all of you very much for the time and consideration that you have brought to bear on the bill from a huge variety of faith and non-faith backgrounds. You have helped the committee to understand some of the implications of what we are dealing with in the bill.

If any of you have issues that you would like to reflect on further and come back to the committee on, please feel free to do so. I know that not everybody was able to say as much as they might ideally have wanted to say on every question, so if there is anything that we have not enabled you to say today, please come back to us. Thank you very much for your help and your time.

Our next meeting, which will be on Tuesday 17 November, will be a virtual meeting in which we will continue to take evidence at stage 1 of the bill. We intend to start at 9 o'clock.

I bring the public part of the meeting to a close.

12:41

Meeting continued in private until 13:00.

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