

Submission to the Justice Committee on the Protection from Stalking Bill

Introduction

The Christian Institute is a non-denominational charity established for the promotion of the Christian faith in the UK and elsewhere. We have approximately ten thousand supporters in Northern Ireland, including almost 1,000 churches and church ministers from across the Christian denominations.

Protection from Stalking Bill

The Christian Institute is commenting only on Clause 2 of the Bill – ‘Offence of threatening or abusive behaviour’.

The proposed offence risks restricting freedom of expression, and its low threshold, broad scope and significant penalties have received surprisingly little scrutiny so far. Legislation must be proportionate and must safeguard free speech. Increasingly, those who participate in vigorous debate on contentious issues are being unfairly accused of unlawful behaviour by opponents seeking to intimidate them into silence. Overly-broad, vague and uncertain laws play into the hands of such people, allowing them to use unfounded allegations to cast a cloud of suspicion over someone holding a different view. Lawmakers have a responsibility to ensure the public are free to disagree with one another and able to debate issues without the threat of censure through the criminal law.

The offence as drafted is based on Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. Section 38 is “one of the most common offences that people are charged with by Police Scotland”.¹ It was introduced after a court judgment was believed to make certain behaviour more difficult to criminalise using an existing breach of the peace offence.² The rationale for importing the offence to Northern Ireland is less clear.

It was stated in the Stage 2 debate in Stormont that the proposed offence is to cover “inappropriate behaviour that falls short of stalking”.³ But the almost identical legislation in Scotland is more commonly used for behaviour unrelated to stalking. Scottish lawyers have criticised Section 38, suggesting it could be used to criminalise someone merely for being rude. Certainly its reach is much wider than stalking. It has been used to prosecute people for playing loud music, for example.⁴ Therefore, Clause 2 has the potential to be far more wide-ranging than the rationale given. A more targeted offence should be considered. If a broad offence is really intended, then the rationale for it should be set out in full, making clear what

¹ Livingstone Brown, 3 February 2021, see <https://bit.ly/3wUJVAj> as at 14 April 2021; see also, *Scottish Legal News: Annual Review 2016*, April 2016, see

<https://www.terrafirmachambers.com/articles/Beingrudeandoffensiveisnotacrimeyet.pdf> as at 14 April 2021

² ‘Section 38’, Graham Walker, see <https://berlowrahman.scot/practice-areas/breach-of-the-peace/> as at 14 April 2021; *Scottish Legal News: Annual Review 2016*, April 2016, see

<https://www.terrafirmachambers.com/articles/Beingrudeandoffensiveisnotacrimeyet.pdf> as at 14 April 2021

³ Protection from Stalking Bill: Second Stage, Northern Ireland Executive Committee, 8 February 2021

⁴ *Scottish Legal News: Annual Review 2016*, April 2016, see

<https://www.terrafirmachambers.com/articles/Beingrudeandoffensiveisnotacrimeyet.pdf> as at 14 April 2021

activity is currently lawful that will be made unlawful by this offence – and why it deserves to be unlawful.

When the Committee heard from Department of Justice officials, little justification was given for including an offence of such scope. In their evidence, officials claimed it makes clear “that the threshold for a conviction can relate to a single instance” of stalking.⁵ But it does far more than this. It dramatically expands the range of behaviour that the Bill covers. The proposal risks stifling legitimate debate and could have a chilling effect on those taking part in reasonable yet controversial discussion. That is not remotely comparable to stalking someone.

The Bill is presented as relating specifically to stalking, yet the impact of the proposed offence of threatening or abusive behaviour will be much more extensive. It is important that this is recognised and properly considered during the legislative process.

One of the reasons the offence is so broad (and why Section 38 is used so frequently) is the threshold of “abusive” words or behaviour. “Abusive” is a subjective term. It is open to wide interpretation, including “rude”, “insulting” and “offensive”. Case law around Article 10 of the European Convention on Human Rights is clear that free speech includes language that offends, shocks or disturbs. A more robust threshold would ensure that this case law is taken into account and that Article 10 rights are properly protected.

The Scottish Parliament recently included a reasonable person test in hate crime legislation to make it clear that the term abusive should be understood objectively (e.g. Section 3(2)(a)(i) of the Hate Crime and Public Order (Scotland) Act 2021).⁶ If the Clause 2 offence is retained as part of the Bill, a similar test could be included. This would be in addition to the reasonable person test in 2(1)(b), which relates to the potential impact rather than the nature of the behaviour.

The Christian Institute
April 2021

⁵ Official Report: Minutes of Evidence, Protection from Stalking Bill, Department of Justice, 21 January 2021

⁶ “behaves in a manner that a reasonable person would consider to be threatening or abusive”