

## **The Proposed Offence**

**Talk written by Mark Mullins, Barrister**

The Government is aware of Daniel Scot's case but does not believe that the same thing could happen in the UK. The purpose of this section of the meeting is to show that there are serious dangers in the proposed offence of inciting hatred against persons on religious grounds that would catch exactly this sort of behaviour here.

The Bill will amend Section 18 of the Public Order Act 1986 so that it will read:

(1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if-

a. he intends thereby to stir up racial or religious hatred, or

- b. having regard to all the circumstances the words, behaviour or material are (or is) likely to be heard or seen by any person in whom they are (or it is) likely to stir up racial or religious hatred.

This is nothing less than a blasphemy law for all religions which, in my view, will be used to restrict Christians preaching the Gospel. Let's look now at the offence to try and show you how potentially dangerous it could be.

### **The threshold for committing the offence**

First the words, sign, material or behaviour must be threatening, abusive or insulting. These words will be given their ordinary dictionary meaning. While the courts have held that words which are rude or offensive are not necessarily insulting the example of Harry Hammond demonstrates that where Christians are concerned the threshold can be disturbingly low.

Mr Hammond was a 67 year old street preacher who suffered from Asperger's syndrome. On 13<sup>th</sup> October 2001 he stood in the Square in Bournemouth holding a placard displaying the words: "Stop immorality,

Stop homosexuality, Stop lesbianism”. This sign stirred up the crowd resulting in Mr Hammond being attacked and pushed to the ground with mud and water being poured over him. Mr Hammond was arrested and later convicted for displaying the sign. Very sadly Mr Hammond died shortly afterwards. Following his conviction his case was appealed to the High Court who held that the magistrates were entitled to find the sign to be insulting because it appeared to relate homosexuality and lesbianism to immorality.

The provision that the words must be threatening, abusive or insulting will not provide much protection if this case is anything to go by. One can easily see how other religions would be insulted by the claim of the Christian faith that all are sinners destined for hell and the only way to God is through His Son, Jesus Christ.

It is worth noting that the ancient common law offence of blasphemy required the words to be contemptuous, scurrilous and ludicrous matters relating to God, Jesus Christ, the Bible and the formularies of the Church of England: very similar you might think.

### **Religious hatred**

Just as the words “threatening, abusive or insulting” will be given their normal meaning so also will hatred. The dictionary defines hatred as intense dislike or detestation. This is the same definition that the Australian court used in Daniel Scot’s case.

What is worrying about the stirring up of hatred is that it is a wholly subjective state of mind which is not necessarily linked to any outward form of behaviour. The common law offence of blasphemy required the words or behaviour complained of to tend to endanger society by endangering the peace or depraving public morality or shaking the fabric of society or being a cause of civil strife. While these may be quaint expressions at least they have an objective element to them.

Religion is not defined and can therefore cover cults including Satanism. We saw recently that on HMS Cumberland a satanist was given permission to read his satanic scriptures on board ship.

In the State of Victoria, Australia, a witch used the same law that caught Daniel Scot to argue that the King James Bible has the potential to vilify many groups in Australian society and should not be used by people running the Alpha course, a widely used introductory course to Christianity. Although this claim was thrown out by the court it shows

how easy it is for anybody of apparently any religious belief to bring a complaint.

### **Intention**

The offence of stirring up religious hatred does not require intention because the offence is framed in the alternative:

(a) he must either intend to stir up racial or religious hatred; **or**

(b) having regard to all the circumstances the words, behaviour or material are (or is) likely to be heard or seen by any person in whom they are (or it is) likely to stir up racial or religious hatred.

**So, in summary, you can be guilty of religious incitement if your words are deemed insulting, and there is a likelihood that at least one person is likely to feel intense dislike as a result.**

### **Defences**

Let us look at the defences for the offence in the Bill:

(4) In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.

(5) A person who is not shown to have intended to stir up racial or religious hatred is not guilty of an offence under this section if he did not intend his words or behaviour, or the written material, to be, and **was not aware that it might be, threatening, abusive or insulting.**

You will notice that **truth** is not a defence and raises the question about how serious the Government really is about protecting the rights of people to confront the misconceived though genuinely held beliefs of others.

Furthermore in sub-clause five a person has to show that he was not aware that his words might be, threatening, abusive or insulting. When it comes to criticising other people's beliefs or lack of them most people are aware that their words might be insulting to those who hold the views under scrutiny. After all we are warned by Paul in Galatians 5 against removing the offence of the Cross.

### **Standard and burden of proof**

While it is true to say that the standard of proof is the criminal standard this factor is neutralised somewhat under the new offence because the threatening, abusive or insulting words or behaviour must only be **likely** to be heard by someone in whom hatred is **likely** to be stirred up.

### **Penalties**

If a person is found guilty of stirring up religious hatred then he faces seven years imprisonment. Compare this with the offence of causing grievous bodily harm which covers all really serious harm short of murder under Section 20 of the Offences Against the Persons Act 1861. What Section 20 has in common with this offence is that intention is not

required. However the maximum sentence for causing really serious harm is only five years – two years less than for stirring up religious hatred.

On 22<sup>nd</sup> June Daniel Scot was ordered to apologise for his comments during the seminar and not to speak about the Qu’ran or Islam anywhere in Australia. If Daniel Scot does not comply then he will find himself in prison. This indicates a further danger to the UK law. If it is passed then it could act as a Justification for Local Authorities and the Police to apply for Anti-Social Behaviour Orders in similar circumstances to Danny Scot. It also opens the possibility of private Injunctions being applied for by organisations such as Muslim Council of Britain.

### **The European Convention on Human Rights**

It is unlikely that a general challenge to the new offence of religious incitement as being incompatible with the rights to freedom of religion and speech would succeed because they can be limited in certain circumstances although it may be that individual cases might be in breach.

### **The need for this Law**

The Government say that the new offence is aimed at really serious cases and they refer to the attacks on mosques after September 11<sup>th</sup>. Of course firebombing a mosque, or a church, or anywhere else, is already illegal. It's already illegal to incite someone to commit criminal damage or violence to a person or to commit a terrorist offence. It's already illegal to harass someone, shouting at them in the street or pestering them with nuisance phone calls or poison pen letters.

The Government says the new law addresses what they call a gap, lacuna, whereby existing race law protects Jews and Sikhs, because they are mono-ethnic religions, but doesn't protect multi-ethnic religions such as Christians and Muslims.

However race and religion are two very different things. Race is unchangeable. However people change religion all the time. Race has no moral component. Religion, by definition, determines a person's morals.

Let me read you the previous Home Secretary's example of a situation where the prosecuting authorities would consider taking action under the new offence:

“In response to an extreme racist organisation widely distributing material setting out a range of insulting and highly inflammatory reasons for hating Islam. Such reasons have included suggesting that Muslims are a threat to British people and liable to molest women and that they should be urgently driven out of Britain.”

However even this offence is caught by existing legislation. Section 31 of the Crime and Disorder Act 1998 contains the offence of religiously aggravated harassment.<sup>1</sup>

On 9<sup>th</sup> January 2002 Mr Norwood, the regional organiser of the British National Party, displayed a poster in the first-floor window of his flat in Shropshire, containing words in very large print "Islam out of Britain" and "Protect the British people".

A member of the public was offended by the poster reported the matter to the Police who removed it and charged Norwood with the offence of causing religiously or racially aggravated harassment, alarm or distress under Section 31 of the Crime & Disorder Act 1998.

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<sup>1</sup> The religious aggravation element was inserted by the Anti-Terrorism, Crime and Security Act 2001

He was convicted in the Magistrates Court and the conviction was upheld in the High court who found that the sign was insulting to Muslims. The European Court of Human Rights rejected a claim to review this decision as inadmissible because it found that such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination.

### **Attorney General's Fiat**

The Government say that no prosecutions will take place without the consent of the Attorney General. However this will place an enormous amount of pressure on one man and expectations of some in the faith community may cause him to allow prosecutions that the Act was never intended to cover. Even if the current Attorney-General resists such pressures, what about his successor, or his successor's successor?

The other practical problem with this safeguard is that the Attorney General will not make a decision until after a (possibly) lengthy and intrusive police investigation which will inevitably involve unnecessary anxiety for otherwise law abiding members of the community. This could

be seriously disruptive if complaints were made at the beginning of a five day university mission for example.

### **Chilling effect**

Unfortunately once this offence becomes law no amount of Government assurances will really matter. It is then in the hands of the courts and it will take on a life of its own.

The danger with the religious incitement law is not just that there will be prosecutions. It's the chilling effect. You will recall that eighteen months ago the Bishop of Chester was investigated by the police for saying that homosexuals could be cured by therapy. Even though he had committed no offence the threat of police investigation can have a disproportionate effect on normally law abiding citizens and discourage them from coming any where near to crossing the line. There have also been examples of the police threatening prosecutions for proselytising Muslims under the existing law.

### **A stick to beat opponents?**

The final danger is that this proposed law could be used as a stick by people to beat their religious opponents with, as the Daniel Scot case demonstrates.

Premier Radio is a Christian radio station based in London. In 2001 the Mysticism and Occultism Federation used five part-time monitors to listen in to the station with the deliberate intention of taking offence and making complaints against it. They objected to them airing preachers warning of the danger of dabbling in the occult. Surprisingly, the Authority upheld some of their complaints. As a result of these complaints the renewal of Premier Radio's broadcasting licence was put in jeopardy although it was in the end renewed.

In Australia it is reported that Muslims are having their meetings infiltrated by Christians. We can see how this could quickly turn into a tit-for tat exercise with the Attorney-General being caught in the middle and being censured for whatever action he takes.

In summary then, this is a further erosion of our Christian privileges in this land. The Christian faith has been protected historically because it represents the cultural heritage of this country – and, more importantly, because it is true. The effect of according equal standing of all other

religions will inevitably be at the expense of the truth, as we have seen in Australia with Daniel Scot's case.

As the Prophet Isaiah said in Isaiah 59: 14

“And judgment is turned away backward, and justice standeth afar off: for truth is fallen in the street, and equity cannot enter.”

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MARK L.R. MULLINS

1 Harcourt Buildings

Temple

London EC4Y 9DA