

Lords to vote on free speech

The Government is seeking to remove the free speech clause from the homosexual hatred law in the face of mounting concern about the erosion of free speech in Britain. The protection, approved by Parliament only last year, is being removed via the Coroners and Justice Bill at the insistence of gay rights group Stonewall.

There is a crucial difference between inciting the commission of a crime and expressing an opposing view. Incitement to commit a crime, e.g. violence or

murder, is rightly already an offence. Clamping down unnecessarily on free speech will do nothing to protect homosexual people.

Even many homosexual activists agree that the incitement offence should, at the very least, include a free speech clause. Its removal will have a chilling effect. And recent cases of Christians facing police intervention or disciplinary action for talking about their beliefs are heightening fears that free speech is under threat.

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Famous names join in call to defend the clause



Rowan Atkinson has described the offence as "censorious".

Liberty, an organisation which seeks to "protect civil liberties and promote human rights for everyone"¹ has opposed the Government's approach on free speech grounds.²

Comedian and free

speech campaigner Rowan Atkinson has also spoken out concerning the "censorious nature" of the offence. He expressed the fear that, without the free speech protection, people would be unsure

of what they were allowed to say and would therefore be fearful of expressing a viewpoint.³

Last year, the Church of England and the Roman Catholic Church made a joint call for a free speech clause.⁴ A recent Church of England briefing confirmed that they see no reason for the free speech protection to be removed.⁵

Several homosexuals including gay rights activist Peter Tatchell and columnist Iain Dale have highlighted free speech concerns.⁶ Writing in *The Times* last year, prominent homosexual Matthew Parris supported the free speech clause, arguing that "free speech demands rough-and-tumble and give-and-take".⁷

Frequently asked questions

1. “If the amendment doesn’t change the definition of the offence, what is the point? Isn’t it unnecessary?”

- It acts as a signpost, drawing the attention of police and prosecutors to legitimate activities that clearly fall outside the offence, so they do not waste their time investigating vexatious complaints and risk inhibiting free speech.
- It is necessary to draw special attention to free speech in regard to this offence because there is such a long history of misunderstanding in relation to allegations of homophobia (see cases on back page).

2. “Doesn’t the free speech clause license threatening words or behaviour intended to stir up hatred against gays and lesbians?”

- Not at all. The Explanatory Notes accompanying the Bill clearly state: “The removal of the section will not affect the threshold required for the offence to be made out”.⁸ By the same token, its existence must not affect the threshold required for the offence either.
- If someone used threatening words to stir up hatred against homosexuals, the free speech clause would be irrelevant. It only applies to activities that already fall outside the definition of the offence. This is why it begins “for the avoidance of doubt” and *not* “it shall be a defence”.

3. “Sexual orientation is more like race than religion, so isn’t it fair to define the new offence in a different way to the religious hatred law?”

- The Government has modelled the offence on the *religious* hatred law, except that it wants to remove the protection for free speech.
- Sexual orientation is not fixed like race. In 2003 Professor Robert Spitzer, a strong supporter of gay rights, published a study in which many of the participants had changed their sexual orientation.⁹ Peter Tatchell has said “it is a choice, and we should be glad it’s that way and celebrate it for ourselves”.¹⁰

4. “Isn’t there a pressing need for this new law because of things like rap lyrics inciting the murder of homosexuals?”

- The existing law already prohibits this sort of material. Under section 44 of the Serious Crime Act 2007, encouraging the commission of an offence is an offence in itself. Rap lyrics encouraging the murder of homosexuals should already be criminal under this provision.
- Nothing in the free speech clause would stop prosecution of hate rappers under the new incitement offence.

Footnotes

¹ See <http://www.liberty-human-rights.org.uk/about/index.shtml> as at 15 April 2009

² *Liberty’s Second Reading Briefing on the Coroners and Justice Bill in the House of Commons*, January 2009, page 22

³ *The Daily Telegraph*, 19 March 2009

⁴ Joint memorandum, see <http://www.publications.parliament.uk/pa/cm200607/cmpublic/criminal/memos/ucm40302.htm> as at 15 April 2009

⁵ Church of England Mission and Public

Affairs Division, *Coroners and Justice Bill Briefing*, 23 January 2009

⁶ *Guardian.co.uk*, 10 October 2007, see <http://www.guardian.co.uk/commentsfree/2007/oct/10/hatespeechvreespeech> as at 15 April 2009; *The Daily Telegraph*, 9 November 2007

⁷ *The Times*, 24 April 2008

⁸ Explanatory Notes to the Coroners and Justice Bill, 25 March 2009, page 61

⁹ Spitzer, R L, ‘Can Some Gay Men and Lesbians Change Their Sexual Orientation? 200 Participants Reporting

a Change from Homosexual to Heterosexual Orientation’, *Archives of Sexual Behaviour*, 32(5), 2003, pages 403-417

¹⁰ *The Observer*, 25 April 1999

¹¹ The Criminal Justice and Immigration Act 2008 amended Part 3A of the Public Order Act 1986 to create the sexual orientation incitement offence.

¹² *Daily Mail*, 23 December 2006

¹³ House of Commons, Hansard, 24 March 2009, col. 203

¹⁴ *Sunday Herald*, 15 January 2006

¹⁵ *Daily Mail*, 12 December 2005

'Homophobic hatred' offence threatens liberty

The free speech clause is clear and simple. It upholds the liberty to engage in discussion and debate over matters of sexual conduct, and clarifies that urging persons to modify their sexual behaviour is not in itself threatening or intended to stir up hatred.

The sexual orientation incitement offence is modelled on the religious hatred law. Both require "threatening" conduct intended to stir up hatred. Yet the Government wants no protection for free speech in the homosexual hatred law even though

In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred.

Public Order Act 1986, Section 29JA"

the religious hatred law contains a free speech clause allowing expressions of antipathy, dislike, ridicule, insult and abuse of religions or belief systems. This wide-ranging free speech protection is much wider than that in the homophobic hatred offence. It was considered necessary by both Houses of Parliament.

The Government

says the threshold for the sexual orientation incitement offence is high enough to protect free speech without the free speech clause. It is true that a jury would almost certainly never decide that moderate expressions of religious belief on sexual conduct cross the line. Yet the problem is not juries but activists seeking to use the new law to silence those who disagree with



Lord Waddington and the wording of his amendment (left).

them, and police officers and Crown Prosecutors, whose over-sensitivity to such complaints has been illustrated in several cases (see back page). Investigation and prosecution, even if it does not result in conviction, severely damages freedom of speech.

Guidance will offer no real protection for victims

Some groups are suggesting that if guidance for police and prosecutors is produced, this will clarify the intentions and operation of the homophobic incitement crime sufficiently to prevent abuses of the law.

"Homophobia" and "transphobia" are terms used to describe a dislike of LGBT people or aspects of their perceived lifestyle... That dislike does not have to be as severe as hatred. It is enough that people do something or abstain from doing something because they do not like LGBT people.

Guidance on Prosecuting Cases of Homophobic and Transphobic Crime, Crown Prosecution Service (CPS), November 2007, para. 3.10

However, it is likely that such guidance will make the problem worse, not better. Current guidance is at the heart of the problem (see boxes for extracts).

Parliament is being asked to abandon the free speech clause in favour of guidance – guidance which Parliament has not been promised the chance to scrutinise or approve, and which could be changed at will.

Guidance replacing the free speech clause, if it truly reflected the law, would have to point out that there is a free speech clause in the religious hatred offence but not in the sexual orientation offence – emphasising the inequality between the offences.

Nor will lengthy guidance be read and digested as easily by busy officers as a brief free speech

The perception of the victim or any other person is the defining factor in determining a hate incident.

Hate Crime: Delivering a Quality Service, ACPO/Home Office, March 2005, para. 2.2.6

clause. Guidance is not binding. It is not law. The CPS and ACPO guidance, along with the Human Rights Act, were all in place when cases like that of Joe and Helen Roberts happened (see back page). Clearly, this was not enough to protect them. Retaining the free speech clause would avoid a chilling effect whereby citizens holding legitimate views on sexual ethics dare not express them because they fear false allegations of homophobia.

CASE#1

Joe and Helen Roberts

Christian pensioners Joe and Helen Roberts complained to their local council about its 'gay rights' policy. Their request to display Christian tracts next to pro-homosexual materials in public buildings was refused. Later two police officers, called in by the Council, quizzed them for 80 minutes about their beliefs on homosexuality and threatened them with seven years in jail. The Roberts were told their behaviour was "believed to be homophobic". Later the police and the Council both admitted they were wrong.¹²



CASE#2

Archbishop of Glasgow

Labour MP Tom Harris has highlighted the disturbing 2006 case of Mario Conti, Archbishop of Glasgow, who was reported to the police for saying in a sermon that civil partnerships undermine marriage.¹³ Green MSP and gay rights activist Patrick Harvie called on the police to intervene despite no homosexual incitement offence being on the statute book. Patrick Harvie said: "What he [Conti] said was clearly homophobic. This is a matter for the police."¹⁴



CASE#3

Lynette Burrows

In December 2005 Lynette Burrows, an author and family-values campaigner, took part in a BBC Radio 5 Live talk show. Mrs Burrows questioned whether homosexual men were suitable adoptive parents. The following day, Mrs Burrows was shocked to receive a telephone call from the police who said a member of the public had made a complaint about her 'homophobic' comments. Mrs Burrows says the police officer proceeded to read her a "lecture about homophobia".¹⁵

CASE#4

Miguel Hayworth

In January 2008 a Christian street preacher in Manchester was silenced by police, taken into the back of a police van, questioned and detained for over an hour following a complaint of 'homophobia'. Miguel Hayworth had been publicly reading from the Bible, from Romans 1:17-32, when a member of the public complained. The passage refers to homosexuality as a sin (along with malice, envy, murder, deceit, pride and disobedience to parents.) The officers later released Mr Hayworth and he was permitted to continue preaching.



CHRISTIAN INFLUENCE IN A SECULAR WORLD