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RESPONSE OF THE CATHOLIC UNION OF GREAT BRITAIN TO THE LAW COMMISSION CONSULTATION ON HATE CRIME

The Catholic Union was founded in 1870 and is the leading representative group for lay Catholics in Britain. It was founded shortly after the legal restrictions on Catholics that had been in place for centuries had been relaxed. It was founded at a time when significant verbal attacks on Catholics were still commonplace and seen as acceptable. We seek to promote the views and interests of the 4.5 million Catholics in England, Wales and Scotland.

The principal concern of the Catholic Union is that any reform of the law on Hate Crimes should not inhibit the legitimate expression of views based on or inspired by the teachings of the Catholic faith. However, our concern is also that others are equally free to express conflicting views. As a community that suffered for a significant period of our history in this country from penal laws, we urge the Law Commission to ensure that the criminal law stays out of both sides of these controversial areas.

The current law is well balanced and properly targeted at serious offences which can be aggravated offences when charged as hate crimes and stirring up offences which rightly have a high threshold for prosecution.

The Law Commission's proposals taken as a whole involve broadening the scope of hate crimes and stirring up offences. This requires the most careful thought and carries significant dangers in a democratic society. It seems to us that a number of 'baseline' points must inform any change in the law in this area:

- (a) The Law Commission is concerned with proposing legislation for a democratic society. Our democratic society has reached the point where, on the one hand, there are an increasing number of incompatible views on deeply emotive personal issues and on the other hand there is an increasing level of intolerance on all sides of these questions;
- (b) The Law Commission is concerned with the criminal law not the civil law. Even being accused of a criminal offence is an extremely serious matter which can have life changing effects on a person's life and future prospects. The Law Commission must therefore be certain of the need for a criminal (as opposed to civil) law before recommending one. It must also draft that law with as much clarity as possible so that the scope of its application is absolutely clear;
- (c) The trends set out in (a) run the risk that some people will organise themselves to weaponise the criminal law in their favour and against their opponents (as we say above,

Catholics have some experience of that in these islands). That is a product of the emotion that is aroused in these areas. This may take the form of trying to bring criminal complaints or of lobbying bodies like the CPS or law reform bodies. Any proposal by the Law Commission must ensure that it has not been influenced by and cannot be used to support these activities. Protection of the individual citizen against the weaponization of the criminal law is one of the 'bright line' differences between a free democratic society and other societies. The Law Commission must ensure that the ordinary person who does not have a pressure group or the access to power enjoyed by pressure groups is protected;

- (d) The concept of 'tolerance' needs to be properly applied. There has been a marked increase in trying to make 'tolerance' mean: 'adherence to my viewpoint'. In fact, tolerance has a very different and crucially important meaning. A person cannot be 'tolerant' of a view with which they are sympathetic or a person they like. There is no use for tolerance in those situations. A person can only be tolerant of a viewpoint with which they actually disagree or of a person with whom they have certain difficulties. There is a very great need for the reasons given at (a), above, for the correct application of tolerance by the law and those administering it;
- (e) Finally, the following statements by the House of Lords and the European Court of Human Rights. In *R v. Home Secretary Ex parte Simms* [2000] 2 AC 115 at 126 -7, Lord Steyn said: *'...the starting point is the right of freedom of expression. In a democracy it is the primary right: without it an effective rule of law is not possible..'* In *Animal Defenders International v. UK*, the Grand Court said at paragraph 100: *'... [it is] one of the essential foundations of a democratic society...it is applicable not only to 'information' or 'ideas' that are favourably received or inoffensive or as a matter of indifference'*.

In this response we focus on one area of greatest concern but the absence of comment on other proposals should not be taken as approval.

QUESTION 52. We provisionally propose that the current protections in sections 29J and 29JA apply to the new offence of stirring up hatred.

Do consultees agree?

We invite consultees' views on whether similar protections should be given in respect of transgender identity, disability and sex or gender, and what these should cover.

Yes. Recent experience shows that there is a risk that legitimate expression of traditional views about aspects of transgender identity, sex or gender may be characterized as a form of "phobia" or an expression of hate. It is essential that the criminal law does not become a way (whether *de facto* or *de jure*) of coercing people into one or other view on any of these issues. The reality is that there

is a wide variety of views on them in society (and, indeed, among some Catholics). This is both to protect those whose views might be different from the majority but also to protect society as a whole. There is now strong evidence from the voting patterns in Anglo-Saxon societies that real or perceived coercion in these areas can lead to a backlash in these and other areas.

The Catholic Union notes that the protections for those wishing to criticise religions are broad and comprehensive. Section 29 J states that:

“Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.”

This protection is compatible with a free democratic society (although the inclusion of ‘abuse’ is not ideal). However, its breadth cannot, fairly, be limited to only one protected characteristic. The criminal law cannot protect persons who criticise religion to a greater extent than it protects a religious person who seeks to criticise a non-religious position. That would not be a fair balance. We underline that we are not, here, concerned with the civil law but with criminal offences. The criminal law must apply equally to all. We are not advocating exemptions based on ‘abuse’ or in precisely the same terms as section 29J. However, there must be equivalent, tailored, wide exemptions from the *criminal law*.

Particular care must be taken with transgender issues: the state of medical knowledge in this area; the widely conflicting views in society about them (on all sides); the particular risks to children and teenagers from a stifled public debate about them; and recent concrete examples of campaigning groups trying to use the existing criminal law against those who disagree with them, must weigh heavily in the balance to be struck by the Law Commission’s proposal.

QUESTION 54. We provisionally propose that prosecutions for stirring up hatred offences should require the personal consent of the Director of Public Prosecutions rather than the consent of the Attorney General.

Do consultees agree?

No. A prosecution for a stirring up offence is a very serious matter and, if the Law Commission’s proposals were to be enacted, the need for an effective control against over- zealous prosecutions would become even greater. The decision should remain with the Attorney General who is accountable to Parliament.

