



Evidence from the Catholic Union of Great Britain to the Joint Committee on Human Rights inquiry into Freedom of Expression

Introduction:

1. The Catholic Union of Great Britain is the leading representative group for lay Catholics in Britain. We seek to promote the views and interests of the 4.5 million Catholics in England, Wales, and Scotland.
2. The principal concern of the Catholic Union is that freedom of expression should include the expression of views based on or inspired by the teachings of the Catholic faith and so allowing Catholics to play a full and uninhibited part in promoting the Common Good of society.

Does hate speech law need to be updated or clarified as shifting social attitudes lead some to consider commonly held views hateful?

3. The Catholic Union has responded to the Law Commission's consultation exercise on hate speech. We believe 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.
4. Any change to hate speech law requires 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) 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) 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. Parliamentarians must therefore be certain of the need for a criminal (as opposed to civil) law before recommending one. Laws on hate speech must have 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 (and 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 lobbying bodies like the CPS or law reform bodies. 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;

(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' or even a coercive "celebration of my values". 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;

(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 Chamber 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 regarded as a matter of indifference, but also to those that offend, shock or disturb*".

5. 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.

What obligations does an employee have to their employer when expressing views on social media, and to what extent can, and should, employers respond to what their employees say on these platforms?

6. Employees are clearly bound by their employment contracts which may include an equality or diversity policy. But it should not be the case that legitimate expressions of traditional views on issues such as marriage and sexual morality are too casually regarded as discriminatory and so contrary to an employer's policy or harmful to an employer's reputation. The principles underlying section 29JA of the Public Order Act 1986 should be applied by analogy to freedom of expression by employees on social media which falls well short of the threshold for threatening words or stirring up hatred.
7. Section 29JA provides in part that "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... [or] any discussion or criticism or marriage which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred".
8. In other words, any such discussion as described in section 29JA should not be taken of itself to be threatening or intended to stir up hatred or discriminatory or contrary to an employer's equality or diversity or similar policy.

Does everyone have equal protection of their right to freedom of expression?

9. There seems to be a difference in practice in applying freedom of expression in relation to issues of religious belief when compared to other protected characteristics under the Equality Act.
10. The Catholic Union notes that the protections for those wishing to criticise religions are broad and comprehensive. Section 29 J of the Public Order Act 1986 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...”*
11. 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.

Is there a need to review the wording and application of Public Space Protection Order (PSPO) legislation?

12. The Catholic Union is concerned that a number of local authorities are using Public Spaces Protection Orders (‘PSPOs’) in ways that are neither in the public interest nor lawful.
13. We are particularly concerned about the use of PSPOs to restrict certain activities within the vicinity of abortion facilities. The first such PSPO was made by Ealing Council and is currently being challenged in the European Court of Human Rights. The manipulation of the process followed in that case illustrates the problem of leaving too much discretion to a local authority acting without the evidential rigour required in court proceedings.
14. In the case of Ealing, a long running and peaceful pro-life vigil outside an abortion facility attended typically by two or three people became the target of a large, organised and noisy opposition group which deliberately created a public order issue and then called for the making of a PSPO to deal with the issue and so remove the pro-life group from the vicinity. A local authority is ill-equipped to deal fairly with questions of disputed evidence and so enabled a politicised process to result in a serious violation of freedom of expression.
15. The Catholic Union is concerned at the use of PSPOs to ban acts of approval or disapproval or attempted acts of approval or disapproval (including prayer) with respect to issues related to abortion services. This is an attempt to use the criminal law to advance certain controversial and contested policy preferences.
16. In the case of Annen v Germany (App. No. 3690/10), the European Court of Human Rights upheld the importance of being able to express differing views on abortion. In para. 64 of its judgment, the Court referred to the “special degree of protection afforded to expressions of opinion which were made in the course of a debate on matters of public interest” such as abortion.
17. The Catholic Union believes that the PSPO legislation should be amended to prevent its manipulation to stifle legitimate freedom of expression.