

**CHRISTIAN CONCERN FOR OUR
NATION/
CHRISTIAN LEGAL CENTRE
UPDATED INFORMATION AND
ACTION PACK ON THE
CORONERS AND JUSTICE BILL
NOVEMBER 2009**



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A. Information on Free Speech and the Removal of Clause 61 (formerly clause 58) of the Coroners and Justice Bill

1. The offence of “inciting hatred on the grounds of sexual orientation” is part of the Criminal Justice and Immigration Act 2008 (“CJI Act”). Lord Waddington successfully inserted a free speech clause into that Act, which has become known as the “Waddington Amendment” or the “free speech clause”. Clause 61 (formerly clause 58) of the Coroners and Justice Bill sought to remove the free speech clause. The House of Lords removed the then clause 61 on 9th July 2009, but its removal has yet to be agreed by the House of Commons. It is to be expected that the House of Commons will vote to insert a clause such as clause 61 again, perhaps with a new number. This Information & Action Pack will refer to this deleted clause as “former clause 61” for the sake of convenience. Please remember that it does not exist in the current version of the Bill, but may be re-inserted. The offence of “inciting hatred on the grounds of sexual orientation” is not yet in force.

2. Former clause 61 (previously clause 58) of the Coroners and Justice Bill sought to repeal section 29JA of the Public Order Act 1986 (inserted by the CJI Act), which is the free speech clause headed “Protection of freedom of expression (sexual orientation)”. It provides that:

In this Part, for the avoidance of doubt, discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices is not to be taken of itself to be threatening or intended to stir up hatred.¹

No Need for Sexual Orientation Hatred Offence

3. The call for the offence was based on the belief that there was a gap in the law whereby offensive rap lyrics² would not be covered.

4. However, the Serious Crime Act 2007 already covers offensive rap music intended to encourage crime, as admitted during the passage of that Bill.³ As a matter of policy, it is

far better to have such matters covered by a generic offence that applies regardless of the group targeted by the lyrics, so that laws apply equally and do not create unnecessary disharmony between different parts of society. This is particularly appropriate in the case of offensive rap lyrics, as they target a number of different groups.⁴

5. In addition, a press release published in October 2007 by the Crown Prosecution Service stated that they were successfully tackling “homophobic” hate crime head on⁵ within the existing law. This was before the creation of the offence showing how the offence itself was already unnecessary.

Free Speech Clause Needed for Clarity

6. It has been argued that the free speech clause is superfluous⁶ because the offence is said to have a “high threshold”, that is, the words or behaviour used must be “threatening” and must be “intended to stir up hatred”⁷ for a person to be guilty of the offence. However, the free speech clause provides much-needed clarity as to what is and what is not covered so that there is no room for doubt and less opportunity for false accusations.

7. There is a free speech provision in the Racial and Religious Hatred Act 2006 (“RRH Act 2006”) on incitement to hatred on which this offence is modelled. That section has exactly the same threshold, so that the words or behaviour need to be both intentional and threatening. However, in the case of the sexual orientation offence, the free speech provision that former clause 61 (previously clause 58) sought to remove, is modest in comparison with the wording of the RRH Act 2006. That Act inserted section 29J into the Public Order Act 1986, which reads:

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 the beliefs or practices of their adherents.⁸

8. Like the RRH Act 2006, the balance requires the inclusion of a free speech provision. There is no evidence to support the removal of the free speech clause, but plenty of evidence that there is a need to retain it. Please see the link to the Lawyers Christian Fellowship (LCF) memorandum of evidence to the CJI Public Bill Committee, which contains numerous cases in this area that support the need to retain the free speech clause.⁹

9. Lord Waddington has indicated that the current CPS policy guidance provides a definition of “homophobic” that cannot be found in any dictionary:

Lord Waddington

...In Committee, the Minister suggested that all our concerns might be met by guidance. But if guidance can be clear, so can the words of a statute. Surely our words are clear enough. Furthermore, guidance was in existence when all the abuses to which I have referred occurred, and which it entirely failed to prevent. Perhaps that was in part

because the guidance was erroneous. When I read Policy for Prosecuting Cases with a Homophobic Element, published by the Crown Prosecution Service, I was astonished to find that it contained a definition of homophobia which does not correspond with that in any of the dictionaries that I have consulted. By my book, homophobia is hatred or fear of homosexuality or homosexuals. But the Crown Prosecution Service has invented its own definition and says that it embraces dislike, not hatred, of a person's lifestyle.

See column 1366 of 21st Apr 2008 at:

<http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80421-0017.htm>.

Guidance Insufficient Replacement for Free Speech Clause

10. During the Bill's Report Stage in the House of Commons on 24th March 2009, David Howarth and Jenny Willott, MPs, tabled a new clause to add to the Bill (number NCI I), which sought to impose a duty on the Director of Public Prosecutions to issue guidance to prosecutors explaining the operation of the sexual orientation hatred offences. The guidance would also be made known to police officers. Before consenting to a prosecution, the Attorney General would have to have regard to the guidance and also to the human rights listed (including freedom of expression and freedom of thought, conscience and religion). It is argued that such guidance would be a sufficient safeguard instead of the free speech clause and would therefore remove the need for it. We believe that this requirement would not be a sufficient safeguard for the following reasons:

- a) the contents of current guidance are not helpful (see below);
- b) the training of officers in this field is likely to be quickly forgotten;
- c) police officers, prosecutors and the court are all bound to look at the legislation first, and the guidance is not legally binding; and
- d) guidance can be changed without Parliamentary debate and the full scrutiny that accompanies primary legislation.

To see amendment NCI I, click on the following link:

<http://www.publications.parliament.uk/pa/cm200809/cmbills/072/amend/psc0721603a.371-377.html>.

During Report Stage in the House of Commons, the Government indicated that it was prepared to discuss the issuing of guidance further. It is likely that there may be further or similar amendments put forward on guidance, as the Bill progresses through the House of Lords.

11. An unreasonable complainant is more likely to be satisfied that a complaint should not be investigated if the police can point to this free speech provision on the face of the law itself, as opposed to a guidance document that is not legally binding.

12. Guidance, whether statutory or non-statutory, should not be supported either as an alternative to the free speech clause, or at all, as it will not provide the much-needed free speech protection that currently exists on the face of the law. It should not be seen as a practical compromise, because it will not provide any protection. Please see

the links to the debate in the House of Lords on 9th July 2009 and 7th May 2008 for various reasons why guidance will not provide sufficient protection.¹⁰

Chilling Effect of Offence on Free Speech

13. The Evangelical Alliance gave evidence of the “chilling effect” the offence may have on free speech (please read the full evidence of the Evangelical Alliance via the link provided).¹¹

14. It must not be forgotten that conviction on indictment for this offence could result in up to seven years’ imprisonment.¹²

Conclusion

15. Without the necessary clarity on the face of the statute, there is a danger that mere dissent from the prevailing view of homosexuality may result in police investigation, with all the trauma and anxiety to the suspect that follow. This would apply equally to those who have simply expressed a legitimate religious belief.

16. During the Report Stage of the Coroners and Justice Bill on 23rd and 24th March, the House of Commons voted against amendment 1, thus approving the current version of the Bill, which will remove the free speech clause if it is passed unchanged. We are hoping that Peers in the House of Lords will table amendments to remove clause 61 (formerly clause 58) of the Coroners and Justice Bill, so that the free speech clause can be maintained in the Criminal Justice and Immigration Act 2008.

17. Please write to Peers who voted in favour of the free speech clause in summer 2009 as a matter of urgency, using Section C of this Pack, and ask them to continue to support the removal of former clause 61. To find out which Peers voted in favour of the free speech clause last time, please see their names listed under “NOT CONTENTS” at this link:

<http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90709-0009.htm> and from the top of the page at this link:

<http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90709-0010.htm>.

There is a detailed description of how to write to Peers at the following link:

http://www.parliament.uk/about/how/members/lords_contact.cfm. The Bill has completed its Report Stage in the House of Lords and if the House of Commons insists on re-inserting former clause 61, it is to be expected that the House of Lords will vote on the clause again probably between Monday, 9th and Thursday, 12th November 2009.

B. Information on How Amendments to the Coroners and Justice Bill Could Allow Assisted Suicide

We give thanks that neither of the amendments that were tabled to legalise assisted suicide were successful. One was defeated by 53 votes and the other was withdrawn. At this stage, it is very unlikely that assisted suicide will be legalised through the Coroners and Justice Bill, but it remains possible.

C. Writing to Peers

Please write to Peers before the Bill returns to the House of Lords at Ping Pong, probably between 9th and 12th November 2009. As the name suggests, this process goes on until both Houses have agreed on the text of the Bill.

The public is welcome to contact Members of the House of Lords. However, please note that the Lords do not represent geographic areas (constituencies) so you will not have a specific Peer for your area, as you do with MPs. The best way to contact Peers is by writing to them. If you wish to write a letter about the free speech clause, please choose Peers who voted for the free speech clause in summer 2009 and encourage them to vote again on this important issue. You can find out which Peers supported the free speech provision by checking their names listed under “NOT CONTENTS” at this link:

<http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90709-0009.htm> and from the top of the page at this link:

<http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90709-0010.htm>. You may also wish to write to a Peer with whom you have personal contact to persuade them of the necessity of voting for the free speech clause.

You can find an alphabetical list of all Peers here:

http://www.parliament.uk/directories/house_of_lords_information_office/alphabetical_list_of_members.cfm.

Instructions on how to write to Peers (including how to address them) can be found at the following links: http://www.parliament.uk/about/how/members/lords_contact.cfm and http://www.parliament.uk/about/how/members/lords_contact/address.cfm.

It is worth noting that bulk mailshots for Members of the House of Lords are not accepted unless every item is individually named and addressed to: The SW1 Delivery Office, 53 Nine Elms Lane, London, SW8 5BB.

Arguments You Could Use to Oppose Former Clause 6I

- Whilst Christians do not believe that hatred should be stirred up against people on the grounds of sexual orientation, it is reasonable to allow debate on the subject of Biblical texts and sexual morality without those who oppose homosexual practice being made to feel that they cannot criticise it without infringing the criminal law. This is the “chilling effect” on free speech that is likely to follow from the removal of the free speech clause.
- The free speech clause was passed only recently in the Criminal Justice and Immigration Act in May 2008. It is a travesty of democracy to attempt to repeal so soon what has only just been decided by our Parliament and Government and without warning to the public.
- The free speech clause is needed to protect orthodox, traditional Christian beliefs on sexual morality and the freedom of speech of other traditionalists.

- Removing the clause would have serious implications for our dearly-held belief in freedom of speech, because it could criminalise the mere criticism of homosexual practice, which is precisely what the free speech exemption that the Government wishes to repeal, seeks to protect.
- In balancing rights and freedoms against each other, the rights of freedom of religion and of conscience, together with freedom of speech in a democratic society should allow for criticisms of different types of sexual conduct or practices. It is important to have this free speech provision to show where the borderline lies so that criticism is not caught by over-zealous or confused police investigation. Guidance will not suffice as it is important that it is within the wording of the Act, because this is the first place the police, courts and judicial system will look. There is judicial authority from Northern Ireland recognising that these traditional Christian beliefs are long-established and worthy of recognition. (See *Christian Institute & Ors, Re Judicial Review* [2007] NIQB 66 (11 September 2007) at paragraph 50. This is available at: <http://www.bailii.org/nie/cases/NIHC/QB/2007/66.html>).
- Existing public order offences already outlaw threatening, abusive or insulting words or behaviour that is likely to cause harassment, alarm or distress. Further, the Serious Crime Act 2007 covers offensive rap music intended to incite crime, as admitted during the passage of that Bill.¹³ These laws cover every member of the population, regardless of the particular motives for the words used. Already there are laws that prohibit discrimination in the fields of employment and the provisions of goods and services. The “incitement to hatred on the grounds of sexual orientation” offence is therefore unnecessary. (For the relevant provisions, please see: Public Order Act 1986, Section 5, Employment Equality (Sexual Orientation) Regulations 2003 and Equality Act (Sexual Orientation) Regulations 2007, all of which are available at: <http://www.statutelaw.gov.uk/Home.aspx>).
- The “incitement to hatred on the grounds of sexual orientation” offence created by the Criminal Justice and Immigration Act 2008 is so widely drafted that it does not make a distinction between sexual orientation and sexual practice, which is a matter of lifestyle choice.
- Christians believe that we should love everyone but that we should state clearly when a particular practice is contrary to God’s commandments. Christians should be able to state their beliefs or discuss them amongst themselves or with others who do not hold Christian beliefs without fearing intervention by the state.
- The offence does not distinguish between inciting the commission of a criminal offence and expressing a view that opposes homosexual practice. Those who oppose the practice of homosexual sex and who wish to criticise it or to discuss the matter should not fear sanctions for exercising their freedom of speech. The

expression of an opinion on the subject is not the same thing as inciting hatred and it is self evident that this distinction should be recognised.

- The removal of the free speech clause has been justified on the grounds that the threshold for the offence to be made out will not be changed. This is hardly the point: without an assurance on the face of the legislation that the criticism of homosexual behaviour will not be caught, there are likely to be many false allegations and fruitless police investigations with the resulting anxiety to the person involved.

How to write

- Be polite, concise and to the point
- Limit your letter to one, or at very most two, sides of A4
- Tell them who you are. Include your profession and information to support your opinion, for example if you are a pastor and are writing about your fear of falling foul of the sexual orientation hatred offence by preaching biblical views on sexual ethics, or if you know someone who is terminally ill and do not want them to feel vulnerable to suggestions that they should commit suicide to avoid being a burden etc.
- Focus on one, or at the most two arguments
- Put your arguments in your own words
- Do not be afraid to mention your faith.

D. Example Letters about Former Clause 61 (previously clause 58)

For instructions on how to address Peers, and the distinctions between forms of address on envelopes and salutations in the letters themselves, please see: http://www.parliament.uk/about/how/members/lords_contact/address.cfm.

Example Letter *Freedom of Speech*

Dear [insert “Lady”/“Lord”/“Lord Bishop” etc. as appropriate followed by name]

Re: Coroners and Justice Bill/Ping-Pong/Waddington Amendment

I am writing to you in relation to former clause 61 (previously clause 58) in the above Bill, which sought to remove the protection of a free speech clause that was inserted into the Public Order Act 1986 by the Criminal Justice and Immigration Act 2008. The free speech clause came to be known as the “Waddington Amendment”. It prevents “criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices” from falling within the definition of “incitement to hatred on the grounds of sexual orientation”. If the free speech clause is removed, such words would be likely to prompt the police to investigate their speaker, even if the speaker was a pastor who had criticised homosexual conduct in the context of an address to believers.

Whilst Christians do not believe that hatred should be stirred up against people on the grounds of sexual orientation, it is reasonable to allow debate on the subject of Biblical texts and sexual ethics without those who oppose homosexual practice being made to feel that they cannot criticise it without infringing the criminal law. This is the “chilling effect” on free speech that is likely to result from the removal of the free speech clause.

The free speech clause is needed to protect orthodox, traditional Christian beliefs on sexual ethics not to mention the freedom of speech of other traditionalists.

Removing the Waddington Amendment would have serious implications for our dearly-held belief in freedom of speech, because it could criminalise the mere criticism of homosexual practice, which is precisely what the free speech exemption seeks to avoid.

The removal of the free speech clause has been justified on the grounds that the threshold for the offence to be made out will not be changed. This is hardly the point: without an assurance on the face of the legislation that the criticism of homosexual behaviour will not be caught, there are likely to be many false allegations and fruitless

Please see next page

police investigations which will cause unnecessary anxiety and expense to the accused.

Please support the Waddington Amendment.

I look forward to hearing from you.

Yours sincerely,

Example Letter
Freedom of Speech: Democracy

Dear [insert “Lady”/“Lord”/“Lord Bishop” etc. as appropriate followed by name]

Re: Coroners and Justice Bill/Ping-Pong/Waddington Amendment

I would like to register my concern in relation to former clause 61 (previously clause 58) of the above Bill, which sought to remove the protection of free speech clause in relation to the offence of inciting hatred on the grounds of sexual orientation. This provision was inserted into the Public Order Act 1986 by the Criminal Justice and Immigration Act 2008 and came to be known as the “Waddington Amendment”.

The Waddington Amendment was given assent only recently in the Criminal Justice and Immigration Act in May 2008. The offence itself is not yet in force. It is a travesty of democracy to repeal so soon what has only just been decided by our Parliament.

The offence does not distinguish between inciting the commission of a criminal offence and expressing a view that opposes homosexual practice. Those who oppose the practice of homosexual sex and who wish to criticise it or to discuss the matter should not fear sanctions for exercising their freedom of speech. The expression of an opinion on the subject is not the same thing as inciting hatred and it is self evident that this distinction should be recognised.

As Christians, we believe that we should love everyone, but that we should state clearly when a particular practice is contrary to God’s commandments. Christians should be able to state their beliefs or discuss them amongst themselves or with non-Christians without fearing intervention by the state.

Please support Lord Waddington’s free speech clause.

I look forward to hearing from you.

Yours sincerely,

Example Letter
Freedom of Speech: Inadequacy of Guidance

Dear [insert “Lady”/“Lord”/“Lord Bishop” etc. as appropriate followed by name]

Re: Coroners and Justice Bill/Ping-Pong/Waddington Amendment

I wish to express my concern at the probable effects that former clause 61 (previously clause 58) of the above Bill would be likely to have if reintroduced. The offence of “inciting hatred on the grounds of sexual orientation” is part of the Criminal Justice and Immigration Act 2008. Lord Waddington inserted a free speech clause into that Act, which former clause 61 sought to remove. The House of Lords deleted clause 61 in a decisive vote on 9th July.

In balancing rights and freedoms against each other in a democratic society, the rights of freedom of religion and of conscience, together with freedom of speech should allow for criticisms of different types of sexual conduct or practices. It is important to have this free speech provision to show where the borderline lies so that criticism is not caught by over-zealous or confused police investigation.

Guidance to police officers and prosecutors will not suffice, as it is important that the extent of the offence is clear within the wording of the Act, because this is the first place the police, courts and judicial system will look. There is judicial authority from Northern Ireland recognising that these traditional Christian beliefs are long-established and worthy of recognition. (See *Christian Institute & Ors, Re Judicial Review* [2007] NIQB 66 (11 September 2007) at paragraph 50. This is available at: <http://www.bailii.org/nie/cases/NIHC/QB/2007/66.html>). The necessity of ensuring that the statute is clear on its face so that police officers do not pursue futile and distressing investigations was detailed by Lord Dear, a former senior police officer, in his speech on 9th July 2009. He said that prior to the Waddington Amendment:

The police were forced to act.... Any complaint of hate crime, by whomsoever made, even a bystander, had to be recorded as such and fully investigated. No exercise of discretion was countenanced. Accordingly, the police, and later the CPS, when faced with a complaint concerning remarks about sexual orientation, would follow the Home Office’s guidance notes, go through the whole procedure of interview, sometimes following arrest—fingerprinting, taking DNA samples, police bail, sometimes charge—even though pretty well everyone in the official process knew that there was little or no chance of a prosecution, much less a conviction, following.

The speech can be read at the following link:
<http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90709-0007.htm> at column 802.

Please see next page

The “incitement to hatred on the grounds of sexual orientation” offence created by the Criminal Justice and Immigration Act 2008 is so widely drafted that it does not make a distinction between sexual orientation and sexual practice, which is a matter of lifestyle choice. People should not fear police action because they disagree with the lifestyle choices of others.

Please support Lord Waddington’s free speech clause.

I look forward to hearing from you soon.

Yours sincerely,

E. References

¹ See section 74 and schedule 16 of the Criminal Justice and Immigration Act 2008 (which inserts section 29JA into the Public Order Act 1986):

http://www.opsi.gov.uk/acts/acts2008/ukpga_20080004_en_1.

² See column 74 for evidence from Stonewall at the following link:

<http://www.publications.parliament.uk/pa/cm200607/cmpublic/criminal/071016/pm/71016s01.htm>.

³ See columns 118 to 119 at:

<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm071022/debtext/71022-0019.htm>.

⁴ See the comment by the Evangelical Alliance when giving evidence to the Public Bill Committee on the CJI Bill at column 148:

Don Horrocks:

...Incidentally, it is not only gay people who are targeted by rap music. For example, rap lyrics gratuitously attack women, race and religion, encourage early sexual behaviour and the taking of drugs and celebrate the carrying of guns and knives. How far do we want to go on this? It is not only gay people who are targeted.

<http://www.publications.parliament.uk/pa/cm200607/cmpublic/criminal/071018/pm/71018s01.htm>.

⁵ See the press release of 11th October 2007 entitled “Figures released today by the Crown Prosecution Service show that homophobic crime is being tackled head on, and with success” at:

http://www.cps.gov.uk/news/pressreleases/archive/2007/166_07.html.

⁶ See comment by John Bercow, MP, at column 36:

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090126/debtext/90126-0006.htm>.

⁷ See the discussion and comments by Marie Eagle at columns 496-498:

<http://www.publications.parliament.uk/pa/cm200809/cmpublic/coroners/090303/pm/90303s11.htm>.

⁸ See “protection of freedom of expression”, section 29J, inserted by the Racial and Religious Hatred Act 2006:

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060001_en_1#1g1.

⁹ See the LCF memorandum to the CJI Public Bill Committee:

<http://www.publications.parliament.uk/pa/cm200607/cmpublic/criminal/memos/ucm30202.htm>.

¹⁰ See in particular the comments of Lord Dear, a former senior police officer, on the dilemma faced by the police in the absence of the free speech clause:

...prior to the Waddington amendment, the police regularly received complaints from homosexual groups that exception was taken to remarks that homosexuality was deplored on religious grounds. The police were forced to act... Any complaint of hate crime, by whomsoever made, even a bystander, had to be recorded as such and fully investigated. No exercise of discretion was countenanced. Accordingly, the police, and later the CPS, when faced with a complaint concerning remarks about sexual orientation, would follow the Home Office’s guidance notes, go through the whole procedure of interview, sometimes following arrest—fingerprinting, taking DNA samples, police bail, sometimes charge—even though pretty well everyone in the official process knew that there was little or no chance of a prosecution, much less a conviction, following.

See <http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90709-0007.htm> at column 802. See also from column 594 to column 614 of 7th May 2008, which contains the debate that provides reasons why guidance would be insufficient:

Lord Waddington: column 597

...Let us be plain: the Government can issue guidance at any time they want and they do not have to get permission from Parliament to do so, but they cannot say that guidance will avoid a repetition of the scandals that we have often referred to, such as the Lytham couple being interrogated and bullied for daring to question the council’s gay rights policy.

Baroness Butler-Sloss: column 600

...but there are religious groups, not only Christians, not only bishops, but many Jews and Muslims, which share strong views that they gain from the Bible, the Old Testament in particular, or the Koran. Those people are potentially at risk....It is those people who will potentially be intimidated; they will certainly be

bothered and may go through an extremely unfortunate experience before calmer heads point out that under the new clause, as under older clauses, they have not committed any offence. It is those people whom the noble Lord, Lord Waddington, has spoken about who, despite everybody's objection to homophobia, none the less need some help. I do not believe that guidance, even better guidance than is provided at the moment—the case of the right reverend Prelate the Bishop of Chester is a pretty good indication that the police guidance cannot be much good—will do what is needed to look after people who genuinely have ideas that are unacceptable to many of us, but who hold them for strong religious views from various religions. That is why this amendment tabled by the noble Lord, Lord Waddington, is not, as the other place said, unnecessary.

Lord Clarke of Hampstead: column 605

My Lords, I have spoken a number of times on the terms of this amendment. I shall make one comment on the Minister's reference to the "alleged" evidence of heavy-handed police. There is no allegation about the couple in Fleetwood. It was a fact that these two lovely old people, who described themselves as Christian pensioners, suffered 80 minutes of interrogation by two six-foot policemen. That was not an allegation, it is a fact, because within 12 months—only 12 months—they got the apology that they deserved. They had committed no crime. There was no reason for what went on. But someone did not understand. That is my worry about guidelines. If we mean that we are to maintain the principle of free speech, we should make sure that it is in this Bill and not leave it to the interpretation of guidelines, which would become another lawyers' paradise. I say that with great respect to the noble and learned Lords in this House. I cannot speak as a lawyer, but I get very concerned when I hear all these angels on top of a pin being counted. The right of free speech is at stake here.

Lord Mackay of Clashfern: column 608

...The amendment seeks to clarify the position with regard to discussion or criticism of sexual conduct or practices... This is an area where the relationship between sexual orientation and conduct involves a difficult distinction for many people to take. It is easy for a lawyer of long experience in this area to make the distinction, but many people, including well-intentioned people in the police force and elsewhere, would find it difficult. The amendment is necessary. The government position, apparently, is that it does no harm. I hope that your Lordships will adhere to it.

See: <http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80507-0007.htm> and <http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80507-0008.htm>.

¹¹ See the Evangelical Alliance's evidence from column 147, after Q 296:

Don Horrocks: column 147

The issue always comes back to the question of freedom of speech. We are not seeking specifically to defend Christians or, indeed, any religious group today. We believe that where the law will impact is on the basic fundamental civil liberty of freedom of speech for everybody, and that is where we are coming from. We think that this measure will have a negative impact, and that is why we are against it.

<http://www.publications.parliament.uk/pa/cm200607/cmpublic/criminal/071018/pm/71018s01.htm>.

¹² See section 29L(3) of the Racial and Religious Hatred Act 2006:

- (3) A person guilty of an offence under this Part is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding seven years or a fine or both;
- (b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

See: http://www.opsi.gov.uk/acts/acts2006/ukpga_20060001_en_1#l1g1.

See also schedule 16, paragraph 16, of the Criminal Justice and Immigration Act 2008:

HATRED ON THE GROUNDS OF SEXUAL ORIENTATION

16 (1) Section 29L (procedure and punishment) is amended as follows.

(2) In subsections (1) and (2), omit "in England and Wales".

(3) In subsection (3), in paragraph (b), for "six months" substitute "12 months".

(4) After that subsection insert—

"(4) In subsection (3)(b) the reference to 12 months shall be read as a reference to 6 months in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003."

This means not exceeding seven years or a fine for a conviction on indictment, or not exceeding twelve months or a fine on summary conviction for the incitement offences for sexual orientation and religious hatred.

See: http://www.opsi.gov.uk/acts/acts2008/ukpga_20080004_en_33#sch16.

¹³ See columns 118 to 119 at:

<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm071022/debtext/71022-0019.htm>.