Submission to the Joint Committee on Human Rights: Freedom Bill

Introduction
The Christian Institute is a non-denominational charity established for the promotion of the Christian faith in the UK and elsewhere. We have 28,000 supporters throughout the UK, including over 3,700 churches and church ministers from almost all the Christian denominations.

We hold traditional, mainstream Christian beliefs about marriage, sexual ethics and the sanctity of human life from conception. A major focus of our work over many years has been to protect religious liberty. We frequently provide advice and assistance to Christians who have been discriminated against because of their faith.

We have a particular interest in human rights litigation to protect freedom of speech, especially for religious people. For example, we persuaded the Belfast High Court to strike down goods and services “harassment” provisions that threatened freedom of speech in regulations brought in under the Equality Act 2006. Other free speech cases we have brought have been successfully settled out of court.

We wish to focus in this submission on the opportunity presented by the Freedom Bill to enhance UK human rights by amending public order legislation in a way which would benefit freedom of speech.

JCHR report of 3 March 2009
In a previous report the Joint Committee on Human Rights recommended amending section 5 of the Public Order Act 1986.1 The Committee had heard evidence that section 5 was being used inappropriately to suppress free speech. It argued the right solution was to delete reference to language or behaviour that is merely “insulting”.

This concern was pursued by Committee in its follow-up report2 and the Government later gave its response in the form of a letter from the then Home Office Minister, David Hanson (see below).

The Freedom Bill provides the perfect vehicle for the amendment proposed by the Committee. The Coalition has stated that the Bill is intended to restore civil liberties through the repeal of “unnecessary laws”.3 Deputy Prime Minister Nick Clegg has promised the Bill will “…protect our hard-won liberties”.4

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2 Demonstrating Respect for Rights? Follow-Up, HC 522 and HL Paper 14-I, para 54
3 Number10.gov.uk, Queen’s Speech – Freedom (Great Repeal) Bill, 25 May 2010, see http://www.number10.gov.uk/queens-speech/2010/05/queens-speech-freedom-great-repeal-bill-50647 as at 3 December 2010
4 The Daily Telegraph, 1 July 2010
Across the political and philosophical spectrum there is concern that section 5 is being used in ways that were never intended. In 2009 when the then Liberal Democrat MP Dr Evan Harris tabled an amendment to remove “insulting”, Conservative spokesman Dominic Grieve MP (now Attorney General) indicated he was “sympathetic” to the suggestion.\(^5\) Liberty and Justice have both raised their concerns about section 5 with the Committee. And the Liberal Democrat manifesto contained a pledge to reform the Public Order Act “to safeguard non-violent protest even if it offends”.\(^6\)

Section 5 was introduced in 1986 against a background of football violence and industrial unrest and was specifically aimed at hooliganism. However, from the very beginning there have been concerns that the wording was overbroad. In 1987 Professor A.T.H. Smith wrote in *Offences Against Public Order* (Sweet and Maxwell) that the breadth of the wording of section 5 allowed scope for injudicious policing.\(^7\)

Smith was cited by the Home Office in a 1994 research study which noted research suggesting that section 5 “was at times employed as a kind of ‘catch-all’ offence which was easy to use because of the relative ease of proof.”\(^8\) Although designed to protect the public, the Home Office research found that in 70% of section 5 offences the police intervened of their own accord without a complaint having been made by a member of the public.\(^9\)

**Case studies**

**Ben and Sharon Vogelenzang**

In March 2009 hotel owners Ben and Sharon Vogelenzang were charged under section 5 following a religious debate with a Muslim guest. In December 2009 the case was thrown out by a court. The conversation had included discussion about whether Islamic dress was a form of bondage for women and whether Jesus was the Son of God. District Judge Richard Clancy said the complainant’s version of events could not be trusted and hinted that the police should have handled the matter differently. There was a public outcry. The couple’s hotel business was ruined as a result of the case.\(^10\)

**Scientology protester**

Liberty gave evidence to the Committee of a 2008 case in which a 16-year-old protester was issued a summons by police under section 5 for holding a placard outside a Scientology centre saying: “Scientology is not a religion, it is a dangerous cult”. City of London Police claimed they respected the right to demonstrate but had to “balance that with the right of all sections of the community not to be alarmed, harassed or distressed”. The allegation that the sign was “abusive or insulting” was

\(^5\) House of Commons, Hansard, 24 March 2009, col. 199  
\(^6\) Liberal Democrat Manifesto 2010, page 93  
\(^7\) Cited in *Policing Low-Level Disorder: Police Use of Section 5 of the Public Order Act 1986*, Home Office Research Study 135, 1994, page 3  
\(^8\) *Policing Low-Level Disorder: Police Use of Section 5 of the Public Order Act 1986*, Home Office Research Study 135, 1994, page 3  
\(^9\) Ibid. p.37  
referred to the CPS. Liberty intervened. There was widespread criticism and the case was dropped.\textsuperscript{11}

**Dale Mcalpine**

In April 2010 Christian street preacher Dale Mcalpine was arrested and detained for over 7 hours after saying to a Police Community Support Officer that homosexuality was a “sin”. The comments were not made during his public preaching but in response to questions asked by the PCSO in conversation. The case was dropped after intervention by The Christian Institute. Homosexual rights campaigner, Peter Tatchell, publicly defended Mr Mcalpine’s freedom of speech, as did the National Secular Society.\textsuperscript{12} Mr Mcalpine took legal action against the police for breach of his human rights. The police recently admitted liability.

**Animal rights campaigners**

Demonstrators in Worcester were threatened with arrest and seizure of property under section 5 for protesting against seal culling using toy seals coloured with red food dye. Police told them the toys were deemed distressing by two members of the public and ordered them to move on.\textsuperscript{13}

**Kyle Little**

After being warned by police for using bad language, Kyle Little was arrested and prosecuted under section 5 for a “daft little growl” and a “woof” aimed towards two Labradors that came towards him. He was detained for five hours, despite the dogs’ owners not wanting any prosecution. At a cost of £8,000 to the taxpayer, Newcastle Crown Court acquitted Little of the charge.\textsuperscript{14}

**Harry Hammond**

In 2002 an elderly Bournemouth street preacher was convicted under section 5 for displaying a sign which said homosexual conduct was immoral. He was fined £300 plus £395 court costs. The High Court later upheld the conviction saying magistrates were entitled to find the sign “insulting” to homosexuals.\textsuperscript{15} Legal academics criticised the ruling.\textsuperscript{16}

The Christian Institute is aware of other misuses of section 5 and is currently supporting litigation in relation to another instance where charges were brought and then dropped.

\textsuperscript{12} See http://www.christian.org.uk/news/gay-rights-campaigner-defends-street-preacher/ as at 3 December 2010
\textsuperscript{13} Worcester News, 21 March 2006. See also http://www.indymedia.org.uk/en/2006/03/336399.html as at 28 September 2010
\textsuperscript{14} The Daily Telegraph, 28 April 2007
\textsuperscript{15} Hammond v Department of Public Prosecutions, [2004] EWHC 69 (Admin)
The position of the previous government

In response to the Committee’s recommendation, the previous government said it believed problems with section 5 could be addressed by guidance. ACPO recently produced new guidance on breach of the peace which does cover section 5.\(^{17}\) We welcome the guidance’s new emphasis on freedom of expression. But, of necessity, because of the actual wording of section 5, the guidance still encourages police to pursue “insulting” words or behaviour.\(^{18}\)

In his letter to the Committee, the previous Home Office Minister David Hanson argued that removing “insulting” would “result in the courts being left in a very curious position on having to decide on a case by case basis whether particular words or behaviour were (criminally) abusive or merely (non-criminally) insulting.”\(^{19}\) This argument is hardly convincing. The criminal courts do nothing else but decide on a case by case basis whether something is criminal or non-criminal. Whether the line is drawn at threatening (as in the incitement to religious hatred offence)\(^{20}\), abusive, insulting, or even impolite, the courts will always be left deciding whether something falls within or without the definition of the offence.

Mr Hanson also argued that the “insulting” limb of section 5 is necessary to protect certain groups from hate crime. He provided no evidence for this claim. We note that the 1994 Home Office report suggested all but a minority of section 5 incidents were “characterised by abusive and disorderly behaviour, often drink-related, concentrated in and around city centre entertainment areas at the weekend.”\(^{21}\)

A former senior crown prosecutor, Neil Addison, who argues in favour of repealing the word “insulting”, has said:

“Looking back on the large number of s5 cases I have either prosecuted or defended over the years I cannot think of any "normal" public order situation which could not be covered by the words "threatening and abusive". Most cases under s5 involve people (often drunk) yelling aggressively and making frequent use of the "F" word and that is the sort of situation that s5 and indeed the entire Public Order Act was supposed to deal with, it was never supposed to deal with the situation where individuals, whether street preachers or otherwise, were expressing their personal opinions.”\(^{22}\)

The police would not be left without powers to protect minorities. The “abusive” limb of section 5 would cover most, if not all, genuine cases. And any repeated harassment of an individual (i.e. more than one incident) can be caught under the Protection from

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\(^{17}\) Manual of Guidance on Keeping the Peace, ACPO, ACPOS, NPIA, 2010

\(^{18}\) Ibid, paras 2.45 and 2.46

\(^{19}\) Demonstrating Respect for Rights? Follow-Up: Government Response to the Committee’s Twenty-second Report of Session 2008-09, Joint Committee on Human Rights, HC 328 and HL Paper 45, para. 17

\(^{20}\) Public Order Act 1986, Section 29B as amended by the Racial and Religious Hatred Act 2006


\(^{22}\) Religion Law Blog, 24 May 2010, see http://religionlaw.blogspot.com/2010/05/what-have-you-been-saying-homophobic.html as at 3 December 2010
Harassment Act 1996. The laws of public nuisance and breach of the peace are broad enough to catch a wide range of disorderly behaviour.

The Christian Institute
3 December 2010