

**BBC Radio 4, 01 April 2024, Siobhian Brown discussing the Hate Crime Act**

<https://www.bbc.co.uk/sounds/play/m001xwqd> (at approx 2:18:20)

Justin Webb

Let us turn to Siobhian Brown, who is the Scottish Government Minister for Victims and Community Safety, so is responsible for this legislation. Siobhian Brown, good morning to you.

Siobhian Brown

Good morning, Justin.

Justin Webb

Is misgendering a crime under this Act?

Siobhian Brown

No, not misgendering, not at all, Justin. If I may, we respect everybody's freedom for expression and nobody in our society should live in fear or be made to feel like they don't belong, so the Scottish Government's committed to building safer communities and living free from hatred and prejudice. And this is what this legislation that comes into place is all about. If I can, this is not a new piece of legislation, stirring up racial hatred has been set in Scots law since 1986. And in England and Wales there's been similar hate crime laws which include stirring up hatred against race, religion and sexual orientation in place since 2006 and 2008. So we are bringing Scotland into line with England and Wales and adding other characteristics as well.

Justin Webb

Yes, well it's the adding of the characteristics. So you're taking Scotland out of line, aren't you, with the rest of the UK. And the reason I asked you about misgendering is that there are some people, including critics of JK Rowling, who say it should be included, including one former SNP counsellor who said recently of JK Rowling, she's not entitled to make people feel uncomfortable and to misgender someone. So just to be absolutely clear, if someone misgenders, in other words calls a transwoman a man, online, a specific individual, you are saying that is not a crime in your view under this Act?

Siobhian Brown

Justin, it would be a police matter for them to assess what happened, but I do need to reiterate...

Justin Webb

So just be clear. So it would be something that someone could complain about and there would be an investigation?

Siobhian Brown

It could be reported and it could be investigated. Whether or not the police would think it was criminal is up to Police Scotland for that. But this Act...

Justin Webb

Hang on, up to Police Scotland. So what would their decision making process be?

Siobhian Brown

That would be an operational decision, Justin. It will not be for me as a Minister to dictate what the police in an operational...

Justin Webb

So each police officer, not all of them have done it, but each police officer has had two hours online training. On the basis of that you are saying it's up to them to decide?

Siobhian Brown

They have had two hours training but there's other things in place with Police Scotland, there's dedicated 24/7 lines for officers if they want to speak to anyone and get guidance on it. There's been a lot of training within the last year.

Justin Webb

But does that training then tell them what it is that they need to base their decision on?

Siobhian Brown

Yes, I believe so. Because what is happening...

Justin Webb

Right. So what is it?

Siobhian Brown

The Chief Constable last week, Justin, if I just may, did say that she was comfortable that the Police Scotland were ready to enact this legislation today and that training was in place.

Justin Webb

So what is it then that they will base their decision on? Is it intent, is it targeting of an individual, what is it?

Siobhian Brown

Okay, there's a very high threshold which is in the Act which would be up to Police Scotland and what would have to be said online or in person would be **threatening and abusive**. If you're conveying a personal opinion that is challenging or offensive for example, that would not be, I would say, would not be criminal.

Justin Webb

That's very clear. So it has to be threatening to an individual. And of course there are lots of threats made, for instance, against JK Rowling and against other women, but they don't come under the terms of this Act do they? Which Peter Tatchell was saying is odd.

Siobhian Brown

Well, I think it was considered when the legislation was going through in 2021. But I think more work needs to be done and as you'll probably be aware, we are bringing through a misogyny Bill.

Justin Webb

Why does more work need to be done? Because you did think about it, didn't you, and you even had an amendment and you arranged it with an SNP MP. Why is it not there?

Siobhian Brown

Because we'll be going further for protection of women through our misogyny bill which will be laid down in parliament this Parliamentary term.

Justin Webb

But why didn't you just include them this time?

Siobhian Brown

It was decided back in 2021 that more work needed to be done to protect women and this is why we're having separate legislation.

Justin Webb

No, but you didn't need to do it, sorry, you didn't need to do any more work, did you? You've just made it very clear that under the terms of this Act, a specific threatening, abusive message to an individual, certainly to a trans individual, might well form the basis of a crime. But I'm saying to you, why didn't you also say that someone who believes in biological sex could also be included in that, and I'm not sure you've answered that really?

Siobhian Brown

If you're going on, Justin, about threats that are made on social media, there is already a legislation in place through the Communications Act 2003 section 127 that does make it a criminal offence if you have threatening behaviour online, or you say something grossly offensive. That is not in this Act. What we are implementing today is, as you know, we're updating the legislation to include religion and sexual orientation, disability, age and also against...

Justin Webb

And what if it's not online, what if it's at home? So this issue has been raised, that someone at home, a couple having a conversation perhaps about trans issues, perhaps about something completely different that's covered in this Act. The child then reports them at one of these reporting centres, in other words a conversation at home is reported. Is that remotely conceivable in your view?

Siobhian Brown

No, I would not believe so. I think we're sort of...this is getting all a little bit out of hand. This Act is being put into place to protect people of marginalised communities from **threatening and abuse**...

Justin Webb

So it will not be as a result of a conversation in a home?

Siobhian Brown

No. No, I do not believe so. And I understand that there's been a lot of concern about vexatious complaints, potentially. I've got faith in Police Scotland. They're used to implementing new legislation and also dealing with vexatious complaints.

Justin Webb

Okay. And a final point about geographical location. So if someone makes a comment that appears to break this law but they're not in Scotland, what happens?

Siobhian Brown

Well, this Act applies to Scotland Justin.

Justin Webb

Right, so someone can say these things in England and not be covered by it?

Siobhian Brown

Well, you already have stirring up racial hate in England towards race, religion and sexual orientation.

Justin Webb

Yes, but say for instance, there was a misgendering of someone in a way that seems to the Scottish police to be threatening to that person, but the person making the misgendering comments were in England, what would happen?

Siobhian Brown

Well, no, we're dealing with Scotland up here, Justin. It would be up to the police in England or Wales to determine what would happen down there.

Justin Webb

Siobhian Brown, Scottish Government Minister for Victims and Community Safety. Thank you very much.