

**Radio Scotland, 03 April 2023, Siobhian Brown discussing the Hate Crime Act**

<https://www.bbc.co.uk/sounds/play/m001xtw9> (at approx 2:06:20)

Laura Maxwell

Joining us is the Minister for Victims and Community Safety. Siobhian Brown. Good morning to you, Minister. Thank you for joining us.

Siobhian Brown

Good morning, Laura.

Laura Maxwell

And we heard last night that there had been more than 3,000 complaints to Police Scotland since Monday when this law came into fruition. Have you got any update on those figures?

Siobhian Brown

No, I haven't. I have been listening to your show this morning so I was updated on the figures when you announced them today. I was actually surprised myself on Monday to receive a call from Police Scotland about my complaint. So, obviously, this was a fake complaint that someone had done anonymously in my name and gave my office number. So I think this just shows the publicity and misinformation that's out there about this Act, that people are making fake and vexatious complaints. I'm not saying all of them have been. But I...

Laura Maxwell

That's something the government was warned about before this was introduced though. We heard from Murdo Fraser half an hour ago, he said, activists, opposition MSPs and the Police Federation had all warned there would be a huge influx of spurious complaints.

Siobhian Brown

Yes there have. But I think also in the last couple of weeks, Laura, I think there has been a lot of misinformation and hysteria regarding this bill being introduced on Monday. And I think it's really clear that we're clear about what this Act is actually doing. A lot of this legislation is being said this is a new legislation coming in. We've had a stirring up hatred in Scotland for over 40 years, and in England and Wales. And England and Wales have had stirring up hatred against sexual orientation, and also against religion for 15 years. So we're bringing that into line in Scotland and adding other protected characteristics.

Laura Maxwell

But why do you think people are so confused then, has the communication round has been poor?

Siobhian Brown

Well, I think we have been trying to get the message out, but as you'll be aware, there has been a lot of misinformation. And it's been going on for several weeks now. But we've been very clear, this Act has been brought in, and it's to protect those in our society who have been at the harsh edge of hate crime, including disabled people, people and also with age and also transgender identity. And I totally understand that the transgender issue has very polarised view. And that's why there has been focus on this, I think we have to be clear, this

Act has been brought into to protect communities who are vulnerable and to protect them from **threatening and violence and inciting hatred** towards them.

Laura Maxwell

Let's look at the transgender issue because in an interview on Monday you suggested that misgendering could lead to a person being investigated, but that it was a matter for the police. We now know that comments made on social media by JK Rowling, in which she misgendered several trans people and challenged the police to arrest her, they're not going to be treated as criminal by Police Scotland. I wonder, is it a failing that it's taken her to make such a public stance to the police to make all of this clear, that misgendering is not a crime?

Siobhian Brown

Yes, I think we've been very, very clear. And even on my radio interview on Monday, I did say, I was clear this is a police issue, I wasn't going to be tied into is this a hate crime, is that not hate crime, because all incidents have merit on their own self.

Laura Maxwell

But is that a failing with legislation though that nobody seems to know what's a crime and what's not a crime until the police decide. And there are then questions about whether that leads to police encroachment.

Siobhian Brown

So when they say it was debated back in 2021, I know there was robust debate and lots of amendments brought in, which was particularly to strengthen the freedom and mix of expression. So it was, as you know, with the exception of the Conservatives, it was voted through through all parties at the Scottish Parliament at the time. Now what it would be to be a crime is to be **threatening and abusive**, with the intent to stir up hatred towards an individual, and that this would cause this individual to have fear or alarm. Now, that is a very, very high threshold for criminality. And also, we've been very, very clear within the Act. This is not about restricting freedom of expression, it is protected, you can say something that may be offensive, but this is particularly about being **threatening and abusive** to cause fear and alarm to individuals who have these protected characteristics. This is where we've got to be very clear. There's a very high threshold for criminality.

Laura Maxwell

Something else that we need to clear up then is whether or not JK Rowling's comments will be recorded as a non crime hate incident.

Siobhian Brown

Yes, so one of the things that I know that Mr Fraser was on previously, before I came on this morning, Laura, is recording of hate crimes or incidents has got nothing to do with the legislation that came in on Monday. So I just want to make that very clear.

Laura Maxwell

He's not the only person asking though. Your colleague, the SNP MP Joanna Cherry has posted on social media asking if JK Rowling's investigation will be recorded as a non crime hate incident. So do you think it will be or not?

Siobhian Brown

I couldn't speculate. It's an operational matter for Police Scotland. But I also need to say, Mr. Fraser's comments that Police Scotland were refusing to change the law on how they record incidents was not necessarily true, because I know that they have said publicly that they are in the process of reviewing that and how they record hate crime incidents. This is not something new. This has been happening for over 20 years, and I know it has been reviewed in England and Wales.

Laura Maxwell

It's the point that some activists are worried about, that if they put something on social media, somebody complains about it because they are offended by it, the police look at it and go, well, actually, no, it's not inciting hatred. They decide to not prosecute but then they record it as a non crime hate incident. And it's something that Murdo Fraser did want to know is whether the First Minister would have complaints against him recorded as non crime hate incidents because he's had complaints against him as well since Monday.

Siobhian Brown

Yes. And so I'm not in a position, I don't know that information, that would be part of Police Scotland and I know you have contacted Police Scotland for a comment on that. It is operational. I do have to say...

Laura Maxwell

Well, should he though? If Murdo Fraser retweets a comment about somebody who's non binary and gets this recorded as a non crime hate incident should the First Minister and JK Rowling have the complaints against them recorded as such?

Siobhian Brown

Yes, I've got faith, Laura, in Police Scotland, that they will be treating everybody the same. I do not believe they will be treating opposition politicians, as suggested, differently to any politician in government or any other individual that might have been reported per se. But I do have to say, with these reports of hate crime or other incidents, this has been happening with domestic abuse also for over 20 years and it gives the police from their side of things sort of an understanding of tensions in communities. So obviously it's not criminality, but this has been happening for a very long time. But I do know that Police Scotland have committed to reviewing.

Laura Maxwell

As we head towards this weekend and an old firm match, the football pundit and former Rangers player Ally McCoist said he and 48,000 others would be in danger of breaching the hate crime law at that match this weekend. We know that rules against sectarianism have been in place for a long period of time, but what does somebody need to do at that match this Saturday in order for them to be subject to breaking the hate crime law? Would they need to say or post? As I say, people don't know what they're allowed to say or do.

Siobhian Brown

No. Yes, and I appreciate it. I'm not going to comment on individuals comments..

Laura Maxwell

An example of something that we could say?

Siobhian Brown

I think as we've seen in the last couple of days, that the Police Scotland coming out and not making criminal offences of some of the things that have been in the media. It would have to be a very high threshold that somebody at these games would have to be inciting hatred, they would have to be **threatening and abusive** with the intent of stirring up hatred to an individual at one of these games, that the individual is in fear and, and in alarm. So if anybody would think going to a football game, to behave in that manner, to cause an individual to be in fear of their life or in alarm, then that's up to the individual, but that would be what would happen with this Hate Crime Act. And I would truly hope that a lot of people attending a football match would not go there with the intention of doing that to individuals.

Laura Maxwell

Thank you so much for your time this morning and explaining lots of that. Minister for Victims and Community Safety, Siobhian Brown, there.