

In recent years the Public Order Act 1986 has been used by the police in ways which have unjustifiably hindered the legitimate freedoms of Christian street-preachers and others involved in evangelistic projects.

Affinity, therefore, welcomes the government's current review of the wording of Section 5 of the existing Act, including the public Consultation, which closed on 13 January, over whether the use of "insulting" words and behaviour should continue to be a criminal offence.

Affinity, convinced that the ministry of street preachers and others is well outside the legal definition intended by the word "insulting" in the 1986 Act, has responded to this Consultation, contending that the word should be removed from the Act. This would leave the police with far fewer grounds for intervention, and preserve a Christian freedom which existed in practice, uncontroversially, for more than 250 years prior to the high profile incidents of the last 10 years.

Affinity has submitted the following responses to the various questions asked in Consultation:

1. Do you think there is a clear difference between 'insulting' words and behaviour and 'abusive' words and behaviour? Please give examples.

Yes, there are two significant differences.

1.1 The word 'insulting' covers a much wider range of circumstances than is covered by the word 'abusive.' Words and behaviour naturally and legitimately described as 'insulting' can vary from the extremely serious to the most trivial and mild. Incidents defined as 'abusive' would all tend to be more serious than most of those considered to be 'insulting.' We go into this distinction in more detail in our answer to question 2.

1.2 Although there is no hard-and-fast rule, 'insult' is something which is 'felt' by a victim, whereas 'abuse', though on occasions likely to be the word chosen by a victim to describe an incident, is probably a somewhat more objective term in common use. The significance of retaining as 'feely' a word as 'insulting' in the Public Order Act is discussed more fully in our answer to question 3.

2. In your experience, are 'insulting' words and behaviours less serious than 'abusive' words and behaviours. Please give examples.

They can be. An 'insult' is capable of being mild, as well as serious. 'Abusive' words and behaviours always convey the impression of being serious and much stronger than the mildest level of 'insult.' In fact the mildest level of insult would never be called abuse. It might be said of someone: 'He's the sort of person who wouldn't get out of his chair to help his grandmother cross the road.' That is certainly an 'insult,' but it would never be described as 'abuse.' Another example is that of an incident involving Judge George Bathurst-Norman at Chelmsford Crown Court.

Judge Bathurst-Norman took exception to the fact that in a probation officer's report, the defendant's wife had been described by the term 'partner.' The judge said: 'Why is it the modern idiom believes in

downgrading marriage in referring to wives and husbands as partners? It's not only insulting, it's inaccurate. Why cannot wives be called wives?' ^[1] The judge clearly felt that it was appropriate to describe the switch of terminology as 'insulting.' He would never have described it as 'abusive.' Verbal 'abuse,' on the other hand, would probably be defined by most people as a torrent of words likely to contain expletives (words that don't contribute to meaning), intimidation, anger, the venting of immoderate frustration; and expressions of dislike or hatred.

An example of such abuse might well be the telephone conversation between Kelvin MacKenzie, then editor of the Sun, and Rupert Murdoch, chairman of News International, which Mr MacKenzie described in his evidence to the Leveson Inquiry on 9 January 2012. Mr MacKenzie is reported as saying that 'he had received 40 minutes of "non-stop abuse" from Mr Murdoch'. ^[2]

These examples indicate the contrast between the two words, and show that 'insulting' is capable of being used quite naturally to describe minor and unthreatening criticisms, and is therefore a wholly inappropriate word to be used in attempting to define public order offences.

^[1] Report in The Daily Telegraph [24 October 2009]

^[2] Report in The Daily Telegraph [10 January 2012]

3. In your view, does having 'insulting' words and behaviour as a criminal offence restrict people from expressing themselves freely?

Yes. As we have indicated in our answer to question 1, whether a word or action is 'insulting' is often determined by what the victim of the insult feels, rather than by any objective test. People are aware that some of the more recent equality and anti-discrimination legislation does create offences defined by the victim, and it would not be surprising if they felt that, on the basis of the inclusion of the word 'insulting,' the Public Order Act 1986 came into this same category of legislation. As a result, and in view of the high profile constantly being given to equality issues, it is not surprising that the public has misunderstood where the bar is set in respect of offences based on the word 'insulting' in Section 5 of the Act. This misunderstanding has created a significant 'chilling' effect which has greatly inhibited legitimate freedom of expression. The recent high profile cases ^[3] in which the police have mistakenly acted as though the 1986 Act was intended to deal with equality and discrimination issues, rather than the public order incidents which it was designed to address, have compounded the problem. The fear of police intervention, even though that intervention is entirely inappropriate and legally unjustified, has exacerbated the 'chilling' effect.

^[3] Such as the Workington case of street-preacher Dale Macalpine (cited in the Consultation Document) in April 2010.

4. In your view, would removal of the word 'insulting' from Section 5 have any particular impact on specific groups? Please give examples.

Yes. In answering all the questions we have addressed in response to the Consultation, we have had in mind the legitimate rights of street preachers and church groups to engage in the kind of good-natured evangelism in which such individuals and groups have been involved, for the most part without police or public concern, since the days of the field-preachers in Wesley's time (approximately 1740). Street-preachers and church groups would immediately benefit from the removal of the word 'insulting' from Section 5, since this step would take away the risk of police intervention on the basis of their message, rather than of their conduct. If the word 'insulting' is removed, police intervention would be limited to those circumstances in which there was something threatening or intimidating about the way in which the individuals or groups were conducting themselves. This narrowing of the criteria for intervention would

bring the police back into line with their own December 2010 guidance, and would give much greater certainty to those involved in street evangelism that peaceable preaching will be supported, rather than oppressed, by the authorities responsible for law and order.

However, our response to the Consultation is not based on special pleading on behalf of those engaged in the kind of street-preaching for which we have a particular sympathy. We believe that in a free country everyone should have the same right of freedom of expression, and opportunity to engage with the public, provided that the circumstances of the exercise of this right are orderly, and do not threaten the peace and safety of members of the public. We are in no doubt that English law supports this right, and that the European Convention on Human Rights intended to make the exercise of this right the rule rather than the exception - a normal accepted experience within the democratic societies signing up to it.

What is clear from the above is that the word 'insulting' has no appropriate place in criminal legislation intended to address public order issues. The Public Order Act 1986 is about conduct and order, not feelings and opinions. The removal of the word 'insulting' from the Act would retain the word 'abusive' to address the kind of conduct which is publicly threatening or intimidating. Retaining 'insulting' would potentially continue to protect the varied sensitivities of individual people, leaving in place the present uncertainty as to what constituted an 'insult' and who had the right to decide whether words or conduct in a particular case were 'insulting' or not. The retention of the word 'abusive' creates an offence sufficient to protect the general safety and peaceable enjoyment of a public space, which is what public order legislation should be about.

5. If you do have concerns about the word 'insulting' remaining in Section 5, can you explain if this is due to interpretation of the word or the actual legislation?

As we have indicated in our answers to other questions, there are serious issues connected with the interpretation of the word 'insulting.' However, we must not be lulled into believing that all the problems arising from Section 5 are solely to do with interpretation, and can be resolved merely by better guidance. There is a fundamental problem with the presence of the word 'insulting' in the Act, based on the combination of the fact that 'insulting' words or conduct can be an offence, and the common perception in the public mind that an 'insult' is subjectively defined by its victim. No amount of improved guidance to police, welcome though clearer and bolder guidance would be, would alter this perception in the mind of the public; and there is no practical way of re-educating the public en masse as to the legal meaning of the word 'insulting.' Retaining the word 'insulting' in Section 5 would therefore be bound to perpetuate the present confusion and injustices.

6. In your opinion, is the 'reasonableness' defence for 'insulting' (which is a statutory defence in Section 5) an adequate safeguard against misuse?

No. For as long as words or actions are viewed by individuals or sections of society on the basis of what someone feels, then this rules out the possibility of an incident being measured by reasonableness. Victims, and those who sympathise with them, are likely to continue to seek redress, whatever view is taken by an impartial party on the basis of reasonableness. Where there is a general perception that it is the victim who decides whether words or conduct are 'insulting' or not, the reasonableness defence will not provide a safeguard sufficient to ensure that the alleged offender is treated fairly.

7. In your opinion, is guidance to police officers clear on when insulting behaviour constitutes an offence and an arrest should be made and is it sufficiently clear to ensure consistency of decisions?

According to the Consultation Document, police guidance issued in December 2010 'clarifies that the key is to distinguish between the message or opinion being communicated and the manner in which it is conveyed.' We agree that this brief summary does identify in simple terms the distinction which needs to be drawn. However, the police in Blackpool, for instance, appear to have ignored this guidance when intervening in September 2011 in the case of a Christian café owner who was showing Bible texts silently on a TV screen. As words displayed silently on a TV screen are non-violent and unthreatening, in this case the 'manner in which it is conveyed' cannot possibly have been the issue. One presumes therefore that the original complaint, and the subsequent police action, were related to the 'message or opinion being communicated.' The fact that the police threatened the café owner with the Public Order Act showed that they had either not looked at the guidance issued nine months previously, or had failed to understand it.

We would like police guidance specifically to address the duty of the police to uphold the right of freedom of expression. The impression is currently often being given that the police allow freedom of expression reluctantly, and only after they have tried their hardest to establish an offence out of every incident drawn to their attention relating to freedom of speech in respect of an equality issue. Freedom of expression is a fundamental human right, as well as an essential constituent of our British values throughout the past few hundred years. This liberty should be strongly defended by the police and not undermined, attacked and curbed at every possible opportunity.

8. Do you think that the threshold for arrest under Section 5 is set at the right level?

No. As we have said in our answer to question 3, the Public Order Act was not enacted in order to deal with discrimination or equality issues. It was passed in 1986 as an instrument for the curbing of football hooliganism involving violence and intimidation in football grounds and on the streets surrounding them. One can imagine that when the word 'insulting' was included in the Act, the legislators had in mind that at some of the serious football-related incidents in 1985, rival gangs had been bating each other, and that aggressive taunts and insults in that context had provoked tit for tat conduct of increasing intensity, leading to serious disorder and public fear. Given this as the context for the Act, it is grossly disproportionate for people to be arrested on the basis of the word 'insulting' in Section 5 simply because they have used a form of words, however peaceably, to which someone has taken exception. The bar is currently therefore too low, and needs to be re-set by the removal of the word 'insulting' from Section 5.

January 2012