

## **Briefing Note: Belfast City Council** **City Centre Speech Permits - October 2021**

The proposal involves two key issues within city centre.

1. Permits for amplification.
2. Permits for stalls, literature, and other display materials.

Some have felt this necessary because of some complaints involving Christian and LGBT activists, pro-life groups, and buskers.

This briefing note lays out several reasons why permits are not the correct way to handle this problem. It also demonstrates some further problems speech permits will create.

### **Free speech as a principle**

The British tradition, especially, after the Glorious Revolution has valued freedom of conscience, civil and religious liberty. This is enshrined in law and practice<sup>1</sup>.

You *do* have a right not to be threatened by speech<sup>2</sup>. However, you *do not* have a right to be comfortable or not offended by speech<sup>3</sup>. If offence was an offence - no one would be able to speak freely<sup>4</sup>. The right to offend is not just a moral right but a legal one.<sup>5</sup>

The very use of the word "permit" suggests that the Council has the authority to determine free expression in the public square. No public body has the moral authority to deny rights to citizens or organisations and there is no doubt this will be tried in court.

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<sup>1</sup> For more information regarding legal issues please see

<https://www.christian.org.uk/resource/free-speech-and-street-evangelism/>

<sup>2</sup> <https://newhumanist.org.uk/articles/4570/on-the-importance-of-the-right-to-offend>

<sup>3</sup> <https://www.independent.co.uk/news/uk/home-news/alan-moses-right-not-to-be-offended-ipso-freedom-of-speech-a9260741.html>

<sup>4</sup> <https://www.dailymail.co.uk/news/article-7710009/Right-offended-does-not-exist-says-High-Court-judge.html>

<sup>5</sup> <https://www.spectator.co.uk/article/there-s-no-right-not-to-be-offended>

## **Rights not Privileges**

This proposal engages Articles 9, 10 & 11<sup>6</sup> of the European Declaration of Human Rights<sup>7</sup>. The UK is a signatory and Northern Ireland has equality and human rights legislation. These are Rights, not privileges.

There is much case law to demonstrate that there are protections for Political and Religious identity. The case law also demonstrates that there are special protections for political and religious speech, literature, and practice. Councils need to be aware of their duty to fully apply Human Rights & Equality to all citizens. Failure to do so may result in costly litigation.<sup>8</sup>

This proposal for speech permits impacts free speech all citizens, not just Christians. This doesn't also just target political activism but all people who wish to enrich the city with cultural or musical performance.

## **Disproportionate and unnecessary**

In terms of rights, proportionality is key. Rights may only be kerbed in the most limited of circumstances and most extreme of situations.

A small number of complaints have been narrowly focused on one or two cases. A permit for every citizen that uses a stall, display materials or amplifiers is disproportionate to the number and nature of complaints to Council.

The problem is narrow, but the proposed solution is wide. It has the potential to criminalise everyone for the behaviour of a select few.

The proposal is also unnecessary because other legislation can be enforced by police to deal with disorder (e.g., common law and breach of the peace). There is also legislation to deal with hate speech and alarm.

There are already laws governing problem noise levels and these are enforced by Council. In terms of inappropriate parking, again, laws

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<sup>6</sup> <https://www.coe.int/en/web/compass/european-convention-on-human-rights>

<sup>7</sup> Full version [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>8</sup> Pertinent case of Andrew Stephenson & Kathryn Attwood vs Chief Constable Sussex police (8<sup>th</sup> July 2015). Judge reaffirmed the couple's right to share images of aborted babies in public square under Human Rights Act specifically Articles 10 & 11. Costs awarded to Attwood & Stephenson totalled £90,000.

already govern this eventuality. It is therefore considered that this proposal is both disproportionate and unnecessary.

### **Rationale for permits**

Key to any understanding of discrimination is the rationale from decision makers. Green<sup>9</sup> & Alliance<sup>10</sup> Councillors are on record - their rationale is to restrict the speech of specific preachers & remove certain political displays. Those parties are also on record that public space is open to other political campaign groups. This is set in the context of the Assembly "Safe access zone bill" which was rightly unanimously opposed by DUP & TUV MLAs on free speech grounds<sup>11</sup>. Green & Alliance parties also appear to be spearheading this campaign.

This could be perceived as discriminatory and why many people have raised concern toward the bylaws.

### **Will free speech protections be enough?**

Once the Council drafts bylaws requesting a permit, (even if it is materials and amplification). The Council subsumes responsibility over the public space. It establishes the principle that in the *public space speech is regulated*. There is nothing to stop speech permits being sought for speakers *without* amplification later.

The most difficult principle to establish is that the Council *can* regulate speech. Therefore, *how* it regulates speech will be much easier to change.

Bylaws place the Council in a role of determining what is and what is not acceptable. This will be a *legal* and *moral minefield*.

A difficulty emerges about who arbitrates when difficulties emerge and who will be the Council's official regulator of acceptable and unacceptable speech.

If the speech regulator is police or a council officer they are placed in a difficult position. There is also the danger of overzealous officers. If a

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<sup>9</sup> <https://www.newsletter.co.uk/news/politics/council/open-air-preachers-could-require-permits-under-bye-laws-under-discussion-by-belfast-city-council-3428329>

<sup>10</sup> <https://www.allianceparty.org/kelly-hopeful-abortion-imagery-will-be-removed-from-city-centre>

<sup>11</sup> [https://www.bbc.co.uk/news/uk-northern-ireland-58877192?at\\_medium=RSS&at\\_campaign=KARANGA](https://www.bbc.co.uk/news/uk-northern-ireland-58877192?at_medium=RSS&at_campaign=KARANGA)

committee or full Council be the speech regulator this is open to political interference. In a deeply divided society, there is a high likelihood that this will be controversial and contentious.

The proposals are too restrictive and give too much power into the hands of the Council. Power which it does not have as Human Rights Law is primary legislation and supersedes any bylaw.

Speech regulation by the Council should concern every citizen and every organisation involved in the public square. Permits of any kind are a threat to free speech.

In a minority unionist Council, any regulation of speech or displays in the public square will be of concern especially to unionists. Specific concern will be how bylaws on displays & materials will be interpreted in relation to parades or unionist protests.

### **Unexpected consequences**

The wide definitions suggested in the bylaws there will be many unintended (or perhaps, not so unintended) consequences.

#### Define - display and materials

In terms of what defines a "display of materials"- this can include posters but also may include a t-shirt, Bibles, Qur'an's, political or religious literature or even business cards.

"Displays" may also have implications for public protests. The unintended consequences for organisations such as Trade Unions and cultural organisations such as the Orange Order are numerous.

#### Define – stalls

If stalls are to have a permit this has implications for street pastors, SOS bus, homeless charities, businesses, religious organisations that hand out free tea & coffee. This will concern many involved in vital work on our streets. Some of the proposals will impact on these groups, perhaps even stopping entirely.

### Disorganised protests

The rules do not consider protests organised “off the cuff”. Such protests are not uncommon in Belfast. Most will not be organised by professionals, and they may not seek permits. This has the potential for disorder as police will be perceived to be “heavy handed” as they fine and enforce this bylaw. When people get arrested or fined wider disorder is likely. Also protest and assembly is sometimes organic. There are times that assembly or protest is required urgently, permits would frustrate this.

### Costs – financial, reputational, and legal

Permits will have a large administrative and legal cost. This will advantage wealthier groups and individuals who already have a greater voice in society.

The permit system will have consequences for council & police officer time and resource in terms of advertising, education, administration, enforcement, and lawsuits.

Lawsuits will be inevitable; the Council will be sued by both complainant and permit holder. This has the potential to be costly, time consuming, risks reputational damage and in rare cases potentially leaves members open to surcharge. This will be of no benefit to the Council.

### Increased complaints

Ironically, when Council subsumes role over permit compliance, complaints will increase to the Council. Vexatious complaints specifically will increase. This causes more controversy not less. Each complaint will also require copious investigation. This is a poor use of resource.

As demonstrated by Insulate Britain and Extinction rebellion, some people will actively pursue arrest to draw attention to their cause. These bylaws will invite provocateurs to break the law. This will inflame not resolve problems for the city centre & councillors.

### **Belfast as capital city**

Belfast is the capital city and as a result is often the location chosen for public demonstrations. The Council must be aware that regulation of speech within the city has an impact on the whole of Northern Ireland.

Trade Unions, Political, Religious and Cultural groups all use the city because of its historic, cultural, and political symbolism. Wide public Consultation would be advised before any change. This cultural, religious, and political life of the city draws people into the city to spend and supports business in the retail core.

As the capital city it also sets the policy direction for many other regional city and town centres. If this legislation were applied throughout Northern Ireland, it would have a major impact on freedom of speech regionally.

Also of note, at time of writing, there are approximately 2400 people who have signed a petition calling for a halt to speech permits. The Council has a duty to listen to its citizens.

### **Case study – Bristol**

In 2016 a Bristol pastor was arrested and was subsequently cleared<sup>12</sup>. In 2020 there were four other pastors arrested and fined. They were later cleared on appeal.<sup>13</sup> Many other pastors are being harassed by public then recorded and arrested by police<sup>14</sup>.

Recently Bristol adopted similar bylaws on amplification. Christians report that police have told them what they may and may not preach on<sup>15</sup>. Christians describe how police were now interpreting the Bible for preachers. Churches are currently under investigation for public preaching under similar rules. Permits invariably give too much power to officials and constrain free expression.<sup>16</sup>

### **Conclusion**

While permits for audio-visual equipment and display materials may seem innocent, they have great potential to cause great harm. To solve a small number of complaints, the Council through permits will create several large problems.

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<sup>12</sup> <https://www.bbc.co.uk/news/uk-england-bristol-55249831>

<sup>13</sup> <https://www.google.co.uk/amp/s/www.bbc.co.uk/news/uk-england-bristol-55263965.amp>

<sup>14</sup> <https://www.bbc.co.uk/news/uk-england-bristol-55215192>

<sup>15</sup> Forbidden topics included - evolution and creation, other religions, atheism, sexual ethics, gender ethics and abortion.

<sup>16</sup> Ongoing legal case hence anonymity.