

Justice Committee

Community Justice (Scotland) Bill

Written submission from the Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC) is the National Equality Body (NEB)¹ for Scotland, England and Wales, working across the nine protected grounds set out in the Equality Act 2010: age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. We are an “A-status” National Human Rights Institution (NHRI)², and share our human rights mandate in Scotland with our colleagues in the Scottish Human Rights Commission (SHRC).

The EHRC welcomes the opportunity to comment on the Community Justice (Scotland) Bill. The Commission has had a long-standing focus on criminal justice, from our work on the Offences (Aggravation by Prejudice) (Scotland) Act 2010 and the Sexual Offences (Scotland) Act 2009, to our major inquiry into crime and harassment targeting disabled people³ and our work on rehabilitation programmes for hate crime offenders. The Commission believes that, for the proposed changes to have the maximum effect, there must be proper alignment with existing statutory and regulatory drivers, particularly the public sector equality duty, and that applying equality and human rights principles will deliver better outcomes for offenders and wider society.

Crime and the fear of crime affect different groups in different ways, and to different extents: for example, women’s experiences of domestic violence and sexual offences are different to men’s; and we know that crime and harassment affecting particular groups, such as disabled or trans people, still often goes unreported. A human rights and equality approach to community justice, which recognises that different approaches may be needed for different groups to achieve equal outcomes, will contribute to the wider public service reform policy goals in the consultation.

My comments relate to the locus of the Public Sector Equality Duty (PSED), both in relation to the existing public bodies which will have responsibilities under the new arrangements and also the new body, Community Justice Scotland. I would also like to draw out lessons from our inquiry into crime and harassment affecting disabled people, particularly in relation to understanding offenders’ motivation.

Public Sector Equality Duty: all public authorities are subject to the general equality duty which requires them, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct

¹ www.equineteurope.org/-Equality-bodies-

² www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx

³ www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-into-disability-related-harassment

- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.⁴

In addition, some bodies, including the Police, the Crown Office, councils and health boards are also covered by the devolved specific equality duties, which in effect set out the steps which must be taken to meet the requirements of the general duty above. These include setting and publishing equality outcomes for different groups and assessing the impact of policy changes.

Understanding motivation, designing effective interventions and reducing reoffending: in 2010-11, the Commission undertook the largest ever inquiry into the steps being taken by public authorities to identify and address crime and harassment targeting disabled people, following earlier research which pointed to disabled victims of crime experiencing significantly worse outcomes than non-disabled victims. The inquiry made seven final recommendations, one of which addresses prevention, deterrence and understanding motivation⁵.

Understanding the underlying motivation of different groups of offenders, and why they target particular groups in turn, is essential in improving outcomes for victims, and in turning around perpetrators' lives. There is still a significant gap in research in the motivations of hate crime offenders: we note the proposed characteristics of the new body : this should include developing expertise and building the evidence base for addressing offending behaviour which targets particular groups.

We also note that since the publication of international research into the rehabilitation of hate crime offenders, progress on developing support packages for such offenders in Scotland has been very slow. This is of concern because in Scotland over 5000 hate crimes are reported every year, and although the majority of them are not violent in nature, they still cause immense distress and division in our society. In ensuring that these matters are adequately addressed, and to assist offenders in dealing with the motivations for hate crime offending, we would strongly recommend that any new body makes specific attempts to provide support to this group.

Proposals for a New National Body and Community Justice Partners: Evidence from our disability harassment inquiry underlines the importance of co-ordinated cross-agency partnership, for example with the new arrangements for adult protection in the Adult Support and Protection (Scotland) Act 2007. With local outcomes increasingly identified at the partnership level through Single Outcome Agreements and Community Planning Partnerships – and the placing of CCPs on a statutory footing with the Community Empowerment Act – the arrangements in the Bill fit with the wider policy environment in Scotland. However, it will be important to ensure that there is strategic coherence and “read-across” from the new community

⁴ Detailed guidance is available at www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/public-sector-equality-duty-scotland

⁵ See www.equalityhumanrights.com/publication/out-open-tackling-disability-related-harassment-manifesto-change , Section 6.

justice arrangements to the equality outcomes set by component organisations such as the police and councils.

Development of a National Strategy and Performance Framework for Criminal Justice: the EHRC supports the creation of a new strategy and performance framework. It is worth noting that many of the factors impact on crime and attempts to reduce reoffending, such as physical and mental health, employment and housing will need to be addressed differently for different groups. An equalities approach is not simply desirable but essential if a national strategy and performance framework are to be as effective as possible.

I hope these comments are useful. If I can provide any further information, please don't hesitate to get in touch.

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