04 March 2021

Dear Convener

Working Group on Misogyny and Criminal Justice in Scotland

I am writing ahead of next week’s Stage Three debate on the Hate Crime and Public Order (Scotland) Bill to update you on the progress that has been made by the Working Group on Misogyny and Criminal Justice in Scotland.

It is clear that there is a pressing need to tackle misogyny and gender-based violence in Scotland and we are absolutely committed to doing so. Through our work to implement the Equally Safe Strategy and take forward recommendations from the First Minister’s National Advisory Council on Women and Girls we understand the significance of how this type of behaviour can limit women and girls and their space for action, and we want to address that.

As you know, in November last year I appointed Baroness Helena Kennedy QC as Chair of the Working Group on Misogyny and Criminal Justice in Scotland. The Working Group has been set up to independently consider how the Scottish criminal justice system deals with misogyny. This includes looking at whether there are gaps in the law that could be addressed by the creation of a separate standalone criminal offence to tackle such behaviour.

Baroness Kennedy has appointed a panel of experts with specialisms in Scots law, human rights, women’s equality and perpetrator behaviours relating to gender based violence. Furthermore Baroness Kennedy has brought advisory counsel from the United Nation’s High Commissioner for Human Rights to support the Working Group; Baroness Kennedy’s esteemed expertise in these areas speaks for itself. Further details about the membership and their remit can be accessed here: Misogyny and Criminal Justice in Scotland Working Group.
The Working Group is now, swiftly, moving forward with the task at hand. The first meeting was held on 12 February and the next meeting is scheduled for later this month. It is the intention of the Chair to hold a series of informative sessions over coming months, taking written and oral evidence from a range of sources. This will include those with direct experience of misogynistic behaviour as well as academics, many who will have provided evidence to the Justice Committee. Whilst the Group will be holding closed sessions, to preserve their independence and freedom to explore these issues fully, I understand that it is the intention of the Chair to speak directly with Parliamentarians who have shown a special interest in this area. I understand that this will take place once we return to Parliament after the election. As such I am pleased that the momentum that has gathered around the Bill and the desire for action, will continue forward to support the work of the Working Group.

Since the Bill’s introduction in April last year, there has been significant debate about whether or not the characteristic of sex should be included. Both those who advocate for and against inclusion have highlighted the prevalence and impact of misogynistic behaviours and attitudes that blight the lives of women and girls across Scotland on a daily basis. I have greatly valued the role that the Justice Committee has played in mediating this debate and through their detailed scrutiny of the evidence, drawing on the expertise of a wide range of witnesses. As you know the Committee concluded in its Stage One report that - although the arguments were finely balanced - it might be wise to wait until the Group has reported before considering legislating to add sex as a hate crime characteristic; a recommendation that I fully endorsed in my response.

I strongly believe that the Working Group, through its independence and its expertise, should be afforded the space it needs to consider carefully whether the inclusion of sex within the hate crime legislative framework adds value within the wider context of their considerations, and to allow it to report back on its recommendations. Their work will include scrutinising the available data and evidence on misogyny in Scotland; assessing how the criminal law currently responds to misogyny; and giving due consideration towards the merits of a standalone offence - potentially a world-leading approach in this area.

The Working Group’s remit therefore includes the consideration of whether the characteristic of sex should be included within the hate crime framework as a statutory aggravation and/or if sex should be added to stirring up hatred offences.

I also fully endorsed the Committee’s conclusion that the working group should complete its work at pace. Recognising a shared ambition to tackle misogyny in Scotland and to put in place solutions as soon as possible, Baroness Kennedy has agreed to provide a final report with recommendations to the Scottish Government within 12 months of the Working Group’s first meeting. To this end, I am now also giving my commitment to act quickly by committing to bring forward proposed draft regulations, as required by the Bill, within one month of receiving this report, if a clear recommendation is made that sex should be included within the hate crime legislative framework.

We must continue to build an approach to tackle violence against women that is truly reflective of the actual experiences of women in our society. We have already shown that we can do this with a domestic abuse offence which has been heralded as the world’s gold standard in tackling all forms of domestic abuse including coercive and controlling behaviour.
We have an opportunity in front of us to draw on the expertise of Baroness Helena Kennedy and of the Working Group to ensure that the laws in Scotland fully recognise these types of insidious behaviours and address it. The Working Group will do this through its consideration of a standalone offence to tackle misogyny, and assessing whether there is value to be gained in adding sex into the hate crime legislative framework as part of this approach.

In next week’s Stage 3 debate I will therefore urge members of all parties to give their support to the Working Group so that it can deliver, uninhibited, on its role and remit and provide its recommendations for us to consider by early next year. As such I have copied this letter to all Members of the Scottish Parliament.

Yours sincerely

[Signature]

HUMZA YOUSAF