

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM GLASGOW CITY COUNCIL

Background

The Scottish Parliament Justice Committee is considering the Hate Crime and Public Order (Scotland) Bill introduced by the Scottish Government in April, and as part of this process is asking for views on the Bill.

The Bill provides for the modernising, consolidating and extending of hate crime legislation in Scotland. The view of the Scottish Government is that legislation in this area has evolved over time in a somewhat fragmented manner resulting in different elements of hate crime law being located in different statutes, there is a lack of consistency, and the relevant legislation is not as user-friendly as it could be. In its opinion, the new hate crime legislation will provide greater clarity, transparency and consistency.

Questions

The response does not need to cover all the questions below and can be restricted to those ones relevant to Glasgow City Council. Additionally if there are any other areas out with those identified below that you believe are relevant to the Committee's consideration of the Bill please include them at the end of the template.

Q1 – General.

Do you think there is a need for this Bill and, if so, why? Are there alternatives to this legislation that would be effective, such as non-legislative measures, wider reforms to police or criminal justice procedures? Are there other provisions you would have liked to have seen in the Bill or other improvements that should have been made to the law on hate crime?

Glasgow City Council supports the case for specific hate crime legislation based on the following:

1. We acknowledge that the harm to hate crime victims is frequently more profound and longer lasting than that of other victims of crime
2. As the largest and most diverse local authority in Scotland, we welcome the bill as a demonstration of government's clear and public condemnation of criminality motivated by prejudice against marginalised and discriminated against groups
3. Hate crime undermines community cohesion as the impact extends beyond the individual victim to others who share the same protected characteristic and therefore legislating against hate crime assists public authorities to fulfil our public sector equality duty to promote good relations between those who share a protected characteristic and those who do not.

While recognising the need for legislation, Glasgow City Council's Household Survey indicates that 80% of hate incidents are not reported to Police Scotland therefore there is a need to place greater emphasis on non-legislative approaches to address

hate crime and to allocate resources accordingly. **Glasgow City Council** suggests the following:

- Establish appropriate governance for Third Party Reporting, accompanied by adequate resourcing.
- Encourage and promote Hate Crime Reporting on a routine basis
- Consider non-legislative measures to working with offenders including a tiered approach in terms of diversion, restorative justice and then programme work through statutory orders, with appropriate assessment of those who commit offences so that they are put through the most appropriate part of the system.
- Consider the development of Restorative approaches as an effective way of changing ideas and beliefs and providing hate crime victims with alternative routes to justice. This is supported by findings from the Leicester Hate Crime Project, Britain's biggest ever study of hate crime victimisation, which showed hate crime victims have a preference for "smarter forms of justice", that are tailored to the specific offence. This approach is supported by Criminal Justice Services.
- Develop a national programme for work with hate crime offenders. Currently there is no national programme for hate crime in Scotland. This could be a development opportunity, as most interventions are local and usually on a one to one basis but not a standard Hate Crime Offenders programme.

Q2 – Consolidation.

The Bill brings together the majority of existing hate crime laws into one piece of legislation. Do you believe there is merit in the consolidation of existing hate crime laws and should all such laws be covered?

Glasgow City Council welcomes the consolidation of existing laws.

From a corporate perspective, in regards to the equalities aspect of Glasgow City Council's obligations in discharging the Public Sector Duty, our aspiration is that all protected characteristics are recognised equally and that we can identify issues impacting on them as easily as possible. Given this, it would be our preference that treatment of crimes against protected groups be prosecuted equally while also being easy to identify.

The consolidation of existing laws, from an education perspective, is useful as young people may find it easier to comprehend what a hate crime is by its association with other hate crimes. For example, when students in S5/6 study our Employment, Social Media & Sectarianism Pack the Equality Act 2010 features heavily and leads to added comprehension of protected characteristics

GCC Criminal Justice Services takes the view that the Bill is an opportunity to clarify the law in relation to hate crime for the Police. However, it is a lost opportunity as it retains the statutory aggravation and standalone offences, with Section 50A being kept outside of the bill. The retention of Section 50A offences could contribute to a level of confusion for Police Officers, whilst recognising that there may also be difficulties in relation to accurately recording common law offences with aggravators.

Overall, Glasgow City Council is uncertain if the proposal to retain Section 50A standalone offences outside the bill, at the same time as consolidating all other forms of statutory aggravations by prejudice and the stirring up offence within the bill, promotes consolidation and consistency, two of the stated purposes of the bill.

Q3 - How to prosecute hate crime?

Do you think that the statutory aggravation model should be the main means for prosecuting hate crimes in Scotland? Should it be used in all circumstances or are there protected characteristics that should be approached differently and why? For example, the merits of a statutory aggravation for sex hostility rather than a standalone offence for misogynistic harassment?

While Glasgow City Council recognises the benefit of standalone offences, particularly for the purpose of improving statistical analysis of hate crime, on balance the preference is to support the statutory aggravation model. The Council agrees with Lord Bracadale that this is the most flexible option for capturing the range of behaviour that we would seek to recognise; it achieves consistency across all categories of hate crime; and is most likely to achieve positive outcomes for victims, as the aggravation does not require corroboration.

Q4.

Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation? Would any alternative means be measured effective? For example, would there have been merit in introducing a statutory aggravation (out with hate crime legislation) for the exploitation of the vulnerability of the victim?

AGE HOSTILITY

GCC is convinced by the arguments put forward in Lord Bracadale's recommendations that while crimes against older people committed due to the victim's vulnerability are more common than crimes motivated by age-based prejudice, the latter type of crime can also be an issue for many older people.

The evidence presented by Action on Elder Abuse noted that they often receive calls to their helpline regarding verbal abuse, harassment or general anti-social behaviour, with many older people telling the charity that they are being targeted because of their age. This evidence is compelling and fits with our tests of the offences that should be recognised as hate crime. GCC would also point out that a distinction between hostility and vulnerability must be clearly drawn and this is particularly relevant for age-based hate crime. Operational guidance is required to support Police and prosecutors in making the distinction between vulnerability and hostility, particularly if the recommendations regarding the introduction of a statutory aggravation of vulnerability is taken forward.

From the perspective of Education Services, the consultation analysis report rightly points out that not all people will identify as vulnerable and judging people so is problematic. An example of this is when the Authorities identify someone as a PREVENT concern, often the client refuses to agree and expresses their right to free speech.

GCC recognises there is a risk that every crime against a person over a certain age could incorrectly be attributed to exploitation of vulnerability and that the element of hostility may be masked by this. Therefore, we emphasise the need for clarity through policy briefings and operational guidance backed by the monitoring of implementation.

Q5 - Other forms of crime not included in the Bill.

Do you think that sectarianism should have been specifically addressed in this Bill and defined in hate crime legislation? For example, should a statutory aggravation relating to sectarianism or a standalone offence have been created and added?

While we appreciate the request from Police and Prosecutors for a definition of sectarianism, Glasgow City Council's view is that there is no need for sectarianism to be specifically addressed in legislation. It is our understanding that the fundamental aspects of sectarian offences in Scotland today are already recognised in existing legislation which deals with offences motivated by racial and religious prejudice.

Q6 - Stirring up offences.

Do you have views on the merits of Part 2 of the Bill and the plans to introduce a new offence of stirring up of hatred?

This is supported by Glasgow City Council.

GCC acknowledges that there are few prosecutions of "stirring up hatred" offences currently, however the commission of crimes motivated by prejudice takes place within a dynamic social and political environment and increasingly global events have repercussions for relations between different groups at a local level.

GCC's view is that there should be consistency in legislation toward each protected characteristic that is recognised in hate crime legislation. We agree that stirring up offences should extend to the 5 protected characteristics currently covered under hate crime legislation plus any additional characteristics that are introduced by the Bill.

Q7.

Do you have any views on the Scottish Government's plans to retain the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of racial hatred, contrary to Lord Bracadale's views that 'insulting' should be removed?

GCC's view is that the thresholds should be the same for all of the "Stirring Up" offences in the Bill, in order to achieve consistency and parity across all hate offences. The Council's view is that "threatening or abusive" behaviour is an appropriate level to set the criminal threshold for stirring up offences as these are easily understood and should protect freedom of expression, disagreement or criticism on the grounds of religious beliefs or practices, legitimate political and public debate. GCC supports the same threshold of threatening or abusive behaviour across characteristics in order to achieve consistency and parity.

From the perspective of Education Services, the threshold of “insulting” behaviour is problematic due to subjectivity of defining what can be classed as insulting.

A further concern is that the adoption of different thresholds may give rise to a perception that it is acceptable to insult some groups.

Q8 - Other issues.

Do you have any comments on what should be covered by the ‘protection of freedom of expression’ provision in the Bill?

GCC's view is that in a democratic and diverse society, a variety of opinions co-exist and that the right to express these views is legitimate and should be protected, in line with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This includes the right to make criticisms of religious beliefs and practices, providing that they don't interfere with the rights of individuals to hold and manifest their religious views, and criticisms of the actions of other because they are incompatible with one's religious doctrine, again providing that this does not interfere with other rights.

Q9.

Do you agree with the Scottish Government that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should not be repealed?

Corporately it is Glasgow City Council's aspiration that all protected characteristics are recognised equally and that we can identify issues impacting on them as easily as possible. Given this, it would be our preference that the treatment of crimes against protected groups be prosecuted equally while also being easy to identify.

In previous consultations GCC has supported the repeal of Section 50A on the basis that while the benefits of stand-alone offences are recognised, it is the Council's position that the model of Statutory Aggravations is more flexible and will lead to better outcomes for victims.

This remains the Council position, however support for the repeal of Section 50A is strongly qualified by two considerations:

One key advantage of standalone offences is that they bring clarity to hate crime recording as the prejudicial element is inherent to the charge and there is no danger of human error or judgement interfering with recording the motivation in these offences. When someone is charged with a Section 50A offence it is clear to everyone what the nature of the charge is and there is no need to be fluent in the naming and numbering of statutes in order to identify what the nature of the charge.

Therefore, repeal of Section 50A in the Council's view, would require close attention as to how to ensure rigour and greater literacy in how these charges are recorded and written up. Without this, there is a danger that the number of recorded racially motivated incidents will drop, with no corresponding decline in the prevalence of incidents. This will distort the picture of racially motivated incidents and it is vital that measures are put in place to mitigate against this risk. GCC suggests that

appropriate IT systems and strong monitoring of recording practices in relation to racially motivated offences should accompany repeal of Section 50A

GCC is also concerned about the message that repeal of Section 50A will send out and measures should be put in place to ensure that repeal does not give the impression that the state is creating a more permissive environment for racially aggravated conduct and harassment. Action from Government is required to provide reassurance to communities who experience targeted racial harassment so that they do not feel more vulnerable or alienated because of repeal.

Q10.

What is your view on the plans for the abolition of the offence of blasphemy?

GCC support this as it recognises modernity.

Other information.

Glasgow City Council would like to highlight to the Justice Committee that hate crime underreporting remains our biggest challenge. The 2019 Glasgow Household Survey suggest that in Glasgow, it is likely that as few as one in five hate incidents are reported to the Police. This means that in the current circumstances the Hate Crime and Public Order Bill will only be applied to a fifth of the hate incidents that take place, and four fifths of incidents will not be dealt with at all under criminal law.

Further, the Glasgow Household Surveys undertaken in 2012, 2015, and 2017, suggest that hate crime underreporting is becoming worse, rather than improving. In 2012, 31% of respondents who had experienced hate incidents stated that they had reported them to the police. By 2019, this number had dropped to 17%. Glasgow City Council would like to bring this matter to the attention of the Justice Committee and highlight that the city's first priority for addressing hate crime is to encourage and promote reporting.

We suggest to the Justice Committee that much greater emphasis needs to be placed on non-legislative measures in order to adequately deal with hate incidents. It follows that resources will be required to support local authorities and our Community Planning Partners to address very complex and entrenched issues in relation to preventing, reporting and responding to hate crime.

Glasgow City Council
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