

Thank you for this opportunity to state my position, raise serious concerns and provide evidence in support. I would like to focus on risks to freedom of speech and expression, democracy, social cohesion, and missing definitions and data, but given the massive scope of the proposal I have had to limit my response drastically. The serious risks to freedom of speech and our freedoms is the true source and a main driver for my rejections stated below, but there are many very serious problems with this proposal, including the fundamental lack of supporting evidence, I have had to concentrate on the latter, where the problem is most profound. Each ‘topic’, nearly every word in this bill requires and deserves singular concentrated attention and requires precise definition and validation and support with quality data, and on all points it is deficient. While most of this proposal must be entirely dismissed, particularly the “law” that is proposed; it is also very likely from a critical review both extant laws and all the parts of extant law referenced in this proposal must be straight forwardly repealed and forgotten, without replacement, as the efficacy and need is substantially unproven. There is growing evidence that the negatives for social cohesion and the risks to personal liberty far outweigh any positives that have been suggested.

- **I support all repeals in this proposal.**
- **I reject the proposed ‘Hate Crime and Public Order proposed legislation’ in its entirety.**
- **I strongly recommend the strengthening of the appropriate criminal law(s) and increased funding and resources for investigation and prosecution. I believe this must be, and should be the focus.**
- **I strongly recommend that government returns to evidence based policy and practice.**
- **I completely reject the proposal to have open ended law, and condemn the suggestion that sex or misogynistic harassment ‘may be added’ in future. (There is no need for a working group with such a limited remit for this purpose alone.)**
- **I do not support the ongoing rejection of empiricism or the denial of science particularly biological fact. Sex is a fact and not simply because it is ‘referenced in the Equalities Act’ sex exists whether the law recognises it or not, for the Scottish Government to focus on gender and not sex is bizarre and irrational. I condemn the attempts to redefine and make meaningless male, female, man and woman, and our fixed immutable sex binary; all have solid material grounding, empirical evidence, and are absolutely necessary for meaningful and accurate communication. I also reject in full the agenda to give special additional protections to particular sexual fetishes in law, and to silence criticism.**

Please note that though I refer to the Scottish Government throughout as the source of this proposal, I am aware that the path being followed and the issues I see, and the concerns I have, apply equally to the path and intentions of the UK government with which the Scottish Government is synchronised in this area. All high level criticisms and rejections apply to Westminster proposals and briefings and relevant extant (UK/E&W) law too. I have considered this carefully and conclude that I reject the notion of ‘Hate Crime’ completely, as legal term, label, and instruments. Hate is emotion, highly subjective and variable in its usage and seriously inappropriate in this context. I would require far more space to lay out my arguments in full, but will also raise there is a fatal flaw in using human “perception(s)” without corroboration, as a basis. There must be serious questions asked about the priorities of government and their focus on this area, particularly at this time. I recognise you have asked for a few sheets of A4 but I must cover one area more than superficially and am obligated to support my position with at least some ‘evidence’, and this makes it longer. (Ref: Connected Communities, Call for Evidence on Hate Crime Bill) I sincerely hope others will cover different angles but I do note in the last part several particular problems that must be addressed. As this has taken a great deal of time in reading and research and formatting this document I hope you will consider this document in full, even though it is only part of what I have been working on. This proposal is far too significant and far ranging and the issues must be given due attention.

I must emphasise ‘insults’ are purely subjective as is what may be perceived as ‘insulting’ and completely unsound in legislation; in statutory aggravations or offences; and must not continue to be designated prosecutable and criminal in our democratic free society.

Referencing (see Addenda) will be high level, the presumption being the reader will be more familiar with the contents of these major documents than I. And for example, the Scottish Government (SG) makes simple reference to Bracadale’s final report and I will do the same, assuming the reader is familiar with his remit, his recommendations and arguments. I will generally make the same presumption of familiarity with the content of other major references re. ‘Hate Crime’ and Domestic Abuse, including but not limited to Police Scotland data published by the Scottish Government, Crown Office Prosecution Service (COPFS) and Scottish Courts reports, from 1999/2000 to date (not limited to the characteristics in this proposal but to all statutory aggravators, and crimes and offences more generally), also related output in Commons Briefings, and from the Law Commission.

Part One: Foreword; Introductory statements and issues  
Part Three: The Data Problem  
Part Four: Particular Problems  
Addendum A: Major References

## PART ONE:

“For example, in principle the Scottish Government has sought to ensure a consistent approach across the characteristics, including any new characteristics. This would involve a standard approach to how, for example, the statutory aggravations are applied, and would also help ensure there is not a perceived (or real) hierarchy between the characteristics.” P3, Policy Memorandum.

First and foremost, it is now absolutely necessary for law in the UK and Scotland specifically to make clear distinction and separate reference, and law, for the physical and material, the immutable facts of our existence and the well evidenced separate from behaviours and patterns of behaviour, and separate from belief, doctrines and ideologies. There is a hierarchy that must be recognised.

Well documented and solidly evidenced history and reproducible science and observable realities must outweigh opinions. Truth and facts must outweigh fictions, and importantly our freedoms must be solidly and permanently protected and not overridden or given less weight because of particular fashions in policy or ideology, or as it appears in this case - so easily dismissed with a declared aim to portray our country as in competition internationally on ‘progressiveness’. It is a major problem that the Scottish Government continues to ‘consolidate’ and conflate what should be distinct, and progresses legislation based on un-evidenced policy, and worse, to deny material realities and common sense in law.

It is a very serious concern that the Scottish Government does not prioritise rationality, freedom of speech and expression, but instead chooses to prioritise the progression and extension of laws that are detrimental to both. I am not alone in stating resources expended on this proposal, this policy, would have been more usefully allocated to investigating and prosecuting serious criminals, serious crimes and stopping criminal activity.

I would also raise and protest that this proposal exempts service providers of responsibility for distributing and making available the most heinous examples of hatred extant; the sadism against the disabled, young and old, women and men, of all colours, ethnicities and sexualities, on sites such as Pornhub. Given that many of the producers, participants and victims are outside our jurisdiction the digital hosting services are the source, purveyors and profiteers from displays of hatred in bulk. I seriously question the Scottish Governments priorities. It is noticeable that the digital providers have been given such a substantial exemption in this proposal where a ‘one off, one time insult’ by an individual is supposedly so very serious and risks a criminal record and even imprisonment. The ‘reasonableness’ protection gives no comfort; we do not appear to be living in reasonable times.

Secondly, I recommend and strongly urge disability should be the concentration of bills of its own focussed on the vulnerabilities of physical and mental disabilities, enhanced support, facilities, access and protections. I do not see this area as at all similar to the other characteristics in the bill and consider the conflation deleterious to the best interests of those with disabilities. Disability is a complex topic deserving serious attention and the data available supports this, including the ongoing increase in incidents. I strongly urge that disability is given priority and dealt with separately now, and hope that others input to reinforce this opinion and to develop more robust and specific law. This should have been and must be the priority. Bracadale in his review discounted and dismissed ‘vulnerability’ and I recognise that to produce a definitive scale or hierarchy of vulnerability is impossible but vulnerability from mental illness and intellectual deficits through physical incapacity is real, is different, cannot be denied and must be recognised. The Scottish Government cannot arbitrarily discount the real life physical reality of disability to equate through ‘similarity’ of law with all other ‘traits’ - this is not equality this is ignoring concrete and important differences, There may not be a hierarchy but there is a distinct difference – a simple two step hierarchy. If you cannot understand, you cannot judge, and if you cannot run away you are handicapped. If you have a genuine physical or mental limitation you are vulnerable to a far greater extent. \* Disabilities are important, relevant to the use of statutory aggravators, if not necessarily the ‘hate’ with which this government and lobbyists are so fixed upon, I think repeated demonstrable hostility and premeditation, patterns of behaviour and intent, and not discounting opportunism, must be where emphasis (and far more intelligent discussion) must take place. The data on disability which records an increase in targeting of the disabled is disconcerting and I strongly recommend that disability is removed from this proposal and dealt with separately with the attention it needs and deserves. So, I am putting aside Disability as a distinct and separate topic.

Thirdly,

297. The consultation also disclosed concerns as regards the exercise of the right to manifest religion under Article 9 of the Convention.  
298. It is accepted that the provisions of the Bill may also result in interferences with the right to manifest religion under Article 9 of the Convention, for instance in relation to proselytising. However, as with Article 10, an interference with the right to manifest religion is lawful where the interference is prescribed by law and is necessary in a democratic society in the interests of specified legitimate aims. These aims include the need to protect the rights of others to protect public order. The Scottish Government is of the view that, given the harms caused by prejudice based offending, it is proportionate for there to be a limited interference with Article 9 rights where that is to protect public order and the rights of others from the stirring up of hatred.  
P, 74/75 Policy Memorandum

I assume religious bodies and secular societies will input with an emphasis on this area. I strongly support a secular state and am pleased to see Scotland become increasingly non-religious, and I support law that allows me freedom from religion and the religious. As I said above I strongly support the creation and prioritisation of law to support well documented historical facts (such as the Shoah, Armenian genocide, value of vaccinations in eradicating disease, and so on) and empiricism, but for the religious I see no need for special or different protections, no special consideration. We should all have absolute freedom to criticise religions and the religious, most especially religions that do not tolerate the views of others, and I recognise we need to limit the actions of the religious through other appropriate law. The only current reference to this has been the Maya Forstater tribunal (Employment) case argued on ‘belief’ -- as fact is not given weight -- where the judge ruled that believing sex and biology is real and immutable and expressing these facts  
AB Version 1.0 22/07/2020

was somehow ‘unacceptable in a democratic society’; an additional feed to my contention that we really need law that actually supports rationality, facts and evidence as superior to ‘beliefs’ and ‘feelings’ in all situations, all cases. I will put Religion aside in the main. However I will note that sectarianism appears to apply only to certain area of Glasgow and is not widespread, and importantly atheists, the non-religious, the anti-religious and apostates should not be grouped under ‘Religion’, they are not ‘religions’ or beliefs. As I have stated I reject this hate crime law in its entirety – all should have the same protections under criminal law and normal offences.

## **PART TWO: The DATA Problem**

There is a major foundational problem with ‘hate crime’ and this proposal in particular, and that is the lack of data. The proposal is not grounded nor supported empirically, and because I see this Data Problem as one of the major reasons to discount and completely reject the proposed ‘Hate Crime Law’ I will provide evidence and argument. Scottish Government refers repeatedly to the data sources; Police Scotland, the Crown Prosecution and Procurator Fiscal Service (COPFS) and the Scottish Courts, Surveys and Consultation responses and I have read nearly all of the ‘Justice system’ reports available up to date and have conducted a detailed comparison with another set of reports for the period for another Statutory Aggravator; Domestic Abuse. This has been useful in covering the serious problems in data collection and systems and also identifying a major issue in Domestic Abuse recording that deserves priority attention, but that is also an issue across the board. At the detail level Police Scotland, COPFS, and Courts no longer record sex accurately, instead there has been for many years the use of ‘self- identification’; what sex a person declares without validation or verification, and Police increasingly are unable to tell (‘not recorded/Unknown’). This is a problem.

Scottish Government references Surveys and Consultation responses and the former has all the issues and un-reliabilities of surveys and more, but most importantly it has not asked questions on or particularly relevant to this proposal. Also, the input to Consultations especially input from individuals is frequently and to a large extent dismissed (see Policy Memorandum and analyses of consultation responses). I will include some pertinent examples to make the problem obvious (evidence), and cover major issues only. There are many deficiencies and misrepresentations. Scotland is not alone in having ‘data problems’ they exist for England and Wales too. In the 2018 Thematic Review of Hate Crime the very first point was the lack of detailed data:

### 1.1. Key Findings

#### 1.1.1. Prevalence and Reporting

1. **Current data limitations mean that understanding the true prevalence of all forms of hate crime, particularly at a sub-strand level, remains a challenge.** The most up-to-date estimate for hate crime by the Crime Survey for England and Wales (CSEW) is for 2012/13 to 2014/15, and suggests a decline in incidents. The highest proportion - roughly half - of CSEW hate crimes were motivated by race, followed by disability, religion, and sexual orientation.

Summary first point from the “Thematic review of evidence for hate crime”, 2018.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/748140/hate-crime-a-thematic-review-of-the-current-evidence-oct2018-horr102.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748140/hate-crime-a-thematic-review-of-the-current-evidence-oct2018-horr102.pdf)

And, from Scotland, Morrow led the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion, and in 2016 Recommendation 6 (actually number 5) on page 20 stated:

6. Consistency and range of data was an issue that came up frequently. Data on hate crime is being held by a range of different bodies – the police, the Crown Office and Procurator Fiscal, the Courts and many local third party reporting centres and community organisations, as well as a range of public authorities, such as local authorities and health boards. Evidence of attitudes (like the Scottish Social Attitudes Survey) is also relevant to understanding the ‘holistic’ picture of hate crime and the drivers of perpetrators. The data held is mixed – whilst useful in some regards, there are issues around the quality of initial recording and challenges presented by the move to a single police force and the adoption of new systems. There is, therefore, a need to consider how information is recorded, how different statistics are drawn together to present a picture of the ‘whole’, and how data is disaggregated to understand issues particular to characteristic, demographic and place. Undertaking this work can be resource intensive if the right systems and processes are not in place, and this is an issue that needs to be considered across the different holders of information. We therefore recommend that: • the Scottish Government works with partners to improve the monitoring and data collection in relation to hate crime, and to develop methods to include qualitative indices of improvement in community cohesion for minorities.

And, the problems with lack of data, missing data, gaps between systems, as well as system problems are mentioned throughout the report. It was a primary problem, though they couch it as diplomatically as possible. Unfortunately, focus and needed resources were not placed on data by the Scottish Government and they continued on campaigns and legislation instead. The follow up to this review was the Bracadale Report and his recommendations for Scots Law -- even though little to nothing had been done on the lack of data on which to base conclusions. The remit of the Law Commission Review (October, 2018 that was to be delivered a few months ago but unfortunately has been delayed) was based on their recommendation from 2014 that:

“Such a review should examine all the available data to establish whether such offences and sentencing provisions should be retained, amended, extended, or repealed, what characteristics need to be protected and the basis on which characteristics should be selected.” Commons Briefing on Hate Crime, 14, January, 2020.

Bracadale Independent Review of Hate Crime Legislation in Scotland, May, 2018. Page 5 and page 14.

### Learning from research and existing material

1.13. My team and I engaged in desktop research into a significant body of published material relating to hate crime. We reviewed parliamentary debates and the reports of working groups. We liaised with policy makers in both the Scottish and UK Governments and the Northern Irish administration, those in the criminal justice system, academics and those involved in initiatives from which we might learn. One example was the pilot scheme developed by a number of English police forces to flag misogynistic or gender-hostility acts as hate crimes. **We also studied the annual statistics produced by COPFS and the Scottish Government in relation to hate crime in Scotland.**

3.4. Over the years since their introduction, these provisions have been extensively used. Having express provisions requires the police (and wider criminal justice system) to be aware of the need to take potential identity hostility into account when investigating crime. Records have been maintained and annual statistics have been published. From the totality of the information available to the review I am satisfied that this approach has worked reasonably well and I recommend that the scheme of statutory aggravations should be retained and developed to form the basis of a clear and comprehensible scheme of hate crime legislation.

To put it simply the major inputs were ‘all talk’, opinions and very little was based on data analysis. I am assuming the reader is familiar with the annual statistics publications mentioned, they are at the highest level. No solid work had been undertaken to integrate and cross reference systems, nor to enhance systems or to improve data quality and expand collection prior to a review of law. In fact it looks like there was next to no data analysis by Bracadale or others of any substance. No analysis supporting or denying the need for and the usefulness of ‘hate crime laws’, for the efficacy of current law or the requirement for new laws or for each of the old or each of the new characteristics, no analyses had or has been published (or referenced), and the only pertinent document “Hate crime: availability of information recorded by the police in Scotland” published on the 2<sup>nd</sup> of February, 2019, documents innumerable problems ongoing and majorly unresolved (it needed/needs the political will and serious investment). Instead an exercise to clean up old records and estimating totals from small samples was started on a small scale and is ongoing. Manipulated data and sampling and extrapolation is normally unacceptable in statistics, the ‘lack of detailed data’ even sub-category information has not been resolved, and this cannot be considered ‘data analysis’ or analysis, most especially when being used as purported support for law making.

Where there is data on age the patterns are often very similar to ‘other crimes’, I am unsure what is intended by age hate crime. Some characteristics have no data whatsoever available, not in Police records, COPFS or Courts. For example, with reference to the 2009 Act, I can find no data on extant characteristics such as “intersexuality” (unsurprisingly as it does not exist and has never existed), “transvestism”, “transsexualism”, or recorded crime by or against GRC holders. There is a high level grouping by ‘transgender’ with a very small number of convictions, but no distinctions. These sub-categories are very different things but there is no data. And, one is uncertain because of the lack of sex data if they are all men; both victim and perpetrator, or if there is a mix, or what is actually going on (most of the offences seem relatively minor). There is an issue it seems in reporting even at the high level of transgender because of the small number and therefore the risk of identification (when there is perhaps only one victim in a situation in a year and so on, \* is used for 5 or less). But, surely that in itself disproves the need for a specific protection. We cannot be creating special law for every personality trait, physical characteristic, odd dress, hobby or predilection and most especially when the ‘actual crime’ is already in law elsewhere. (see developing appetite below). This has created a hierarchy of victimhood.

Similarly, for the new characteristics I cannot find any evidence of ‘VSC’ crime or any of the other sub categories -- and fundamentally I am uncertain what they even mean (see Particular Problems). To create a law to protect undefined vague characteristics, which in most cases the Scottish Government is unable to meaningfully define, and that strongly appear to have had no officially recorded reports or offences or crimes against them must be completely rejected. Excerpt from a COPFS response email posted online;

Date: Mon, 15 Jun 2020, 17:24

Subject: RE: COPFS FOI: HATE CRIME Reports in pdf format and official working links to the reports for referencing, for 2018-2019 and 2019-2020.

You have probably already seen the publication, <https://www.copfs.gov.uk/publications/equality-and-diversity>

**No, I am afraid there is no single publication that provides an overview of all data on hate crime from Police Recorded Crime through to convictions.**

The only data I am aware of which provides information on the police as victims of hate crime relates to some research carried out by Scottish Government researchers a couple of years ago, in relation to religiously aggravated hate crime. This is available at the following link. <https://www.gov.scot/publications/religiously-aggravated-offending-scotland-2017-18/>

You may also be interested in some additional research conducted by Scottish Government statisticians, using police data, at the following link. <https://www.gov.scot/publications/developing-information-hate-crime-recorded-police-scotland/>

**I am not aware of any data on VSC.**

Similar statements about lack of data and missing data or no data appear in every document in the UK, for all countries, and many FOIs, when one actually looks for evidence. Year after year this lack of detailed data and even just, accurate high level reliable usable data is raised as a major problem. It is raised as the first or a major priority concern in every review and every Action Plan, any exercise that does not have a limited remit (i.e. that makes no reference to data, evidence, and the analysis of evidence)/ “**Hate crime: availability of information recorded by the police in Scotland**” published on the 2<sup>nd</sup> of February, 2019 is an indictment of Scottish Government and Police Scotland systems, of current data integrity, indexing and completeness, problems with iVPD have been documented since 2003.

(2017/2018) ...the police recorded 6,736 hate crimes in 2017-18. Two-thirds (67%) of those crimes included a race aggravation, 16% a sexual orientation aggravation, 7% a religion aggravation, 4% a disability aggravation and 1% a transgender identity aggravation. The remaining 5% had multiple hate aggravations. P.13 Policy Memorandum

I attach below an example from Scotland, from a recent FOI response;

I was interested to read more about crime statistics in Scotland. Unfortunately I cannot find the information I am looking for and so ask for it via this FOI request.

Publication: "Recorded Crime in Scotland 2018-2019" Table A7: Racial Aggravated Offences  
URL: <https://www.gov.scot/publications/recorded-crime-scotland-2018-19/pages/21/>

Total racial aggravated offences: 1,921

Publication: "Hate Crime in Scotland 2018-2019"  
URL: <https://www.copfs.gov.uk/media-site/media-releases/1845-hate-crime-in-scotland-2018-19>

Total race related hate crimes: 2,880

### 1. Why is there a difference in the figures quoted?

As you may be aware an individual's right under the Freedom of Information (Scotland) Act 2002 is to receive recorded information held by a public authority. As your question seeks opinion as opposed to recorded information, I must conclude that it is not valid in terms of section 8 of the Freedom of Information (Scotland) Act 2002.

To be of assistance I can advise that Police Scotland will have provided the statistical information to the Scottish Government. The second link provided above relates to the Crown Office and Procurator Fiscal Service who are a separate entity with their own recording standards.

### 2. How many race related crimes were there in Scotland during the period 2018-2019 according to your own statistics?

As stated above, the information contained within the first link was provided by Police Scotland. Our Analysis and Performance department have, on receipt of this request, rerun the search and the data is provided below.

I would ask that you note that the figure you quoted – 1921 was for 2017/18. The figure for 2018/19 was 1744.

#### Number of recorded crimes of behaving in racially aggravated conduct and racially aggravated harassment for Police Scotland <sup>1</sup>

Period: Financial Year 2018/19

Crime bulletin crime type	2018/19
Racially aggravated harassment	106
Racially aggravated conduct	1655
<b>Total</b>	<b>1761</b>

All statistics are provisional and should be treated as management information. All data have been extracted from Police Scotland internal systems and are correct as at 22/6/2020.

1. The data was extracted using the crime's raised date and by using S/GJD codes 604704 and 604705.

I would ask that you note that there is a slight difference in the figures provided now. The reason for this being that crimes, which were committed during 2018/19, will have been reported after this date and our recording systems updated.

### 3. What percentage of these crimes were perpetrated by individuals categorised or whom identified as White?

In accordance with Sections 12(1) (Excessive cost of compliance) and 16(4) (Refusal of request) of the Freedom of Information (Scotland) Act 2002 (the Act), this letter represents a Refusal Notice.

By way of explanation, we cannot electronically extract this information from our recording systems. To provide this information each record would have to be physically examined.

If I was to use the example that it took 10 minutes to check each report then calculations show that for the year 2018/19 (1761 reports), it would take approximately 293 hours, and would cost approximately £4,402 to carry out this task. This is in excess of the £600 prescribed by the Scottish Ministers under the Act.

Publication: Homicide in Scotland 2018-2019  
URL: <https://www.gov.scot/publications/homicide-scotland-2018-19/>

1. Can you provide a breakdown of the ethnicity of the 83 accused?
2. Can you provide a breakdown of the ethnicity of the 61 victims?
3. Can you advise how many homicides had a racial motive?

I would advise that we are still researching this part of your request and will forward an appropriate response as soon as possible. Please accept my apologies for the delay.

IM-FOI-2020-1035 14 July 2020

[https://www.whatdotheyknow.com/request/670497/response/1600362/attach/3/20%201035%20Response.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/670497/response/1600362/attach/3/20%201035%20Response.pdf?cookie_passthrough=1)

I find count mismatches throughout documentation. Pertinently Police Scotland does not have data for analysis on the sub-characteristics; it does not exist or cannot be extracted easily and they rely on manual searches (this ‘situation’ is repeated for many systems, many organisations, across Scotland, the IT systems are inadequate, much is unformatted and data quality is minimal). We do not know what the ‘race’ related crimes are or the sub-characteristics or the traits of the victims, perpetrators or witnesses. It could be any of the sub categories such as nationality or ethnicity, much could be inter-nationality or between ethnic groups, we do not know, and this is for a period that ended April, 2019, more than a year ago.

This is reporting data, what I consider high level reporting data that one would expect to have been available for any discussions of ‘Hate crime’. It is a baseline requirement to be able to discuss the subject with integrity. But, it has not been collated or necessarily even collected; it is not available.

Scottish High Level figures for 2017/2018 form the Policy Memorandum (P.13) “the police recorded **6,736 hate crimes** in 2017-18. Two-thirds (67%) of those crimes included a race aggravation, 16% a sexual orientation aggravation, 7% a religion aggravation, 4% a disability aggravation and 1% a transgender identity aggravation. The remaining 5% had multiple hate aggravations.” Note this is simply ‘reports’ and someone ‘reporting a perceived crime’; what could potentially be ‘a crime’ should not be described as an actual “hate crime”; this is misleading hyperbole, unfair (and must be unjust) to the accused. There is a general tendency to use percentages where I consider it unhelpful and it can be misleading. When numbers are this small percentages should be used very carefully, and are only useful as percentages of the population. Also, apparently there was a demand in the UK for ‘infographics’ some years ago, most are not particularly informative or useful. COPFS however produces succinct tables and reports annually. Unfortunately, combined data from initial calls through to convictions and sentences by category, sub- category and major traits would have been much more “user friendly” much more useful – and this is not available.

### Domestic Abuse Comparison

In the Policy Memorandum they document **1,323** convictions for extant characteristics for 2017/2018 for a population of approximately 5 million from **6,726** reports. In comparison for **2017/2018 Domestic Abuse** which included crimes or offences for the same year totalled **59,541** incidents.

**Table 6: Incidents of domestic abuse recorded by the police, by gender of victim & accused, Scotland, 2008-09 to 2017-18<sup>1, 4</sup>**

	Number & Percentage										
	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	
Female victim, male accused	44,961	41,927	44,951	46,439	45,916	42,120	39,483	43,158	42,759	39,864	
% of total known	84	82	81	81	80	80	79	79	79	81	
Male victim, female accused	7,361	7,938	8,889	9,569	9,946	9,435	8,901	9,845	9,957	7,929	
% of total known	14	15	16	17	17	18	18	18	18	16	
Female victim, female accused	640	682	736	566	605	612	671	743	737	617	
% of total known	1	1	1	1	1	1	1	1	1	1	
Male victim, male accused	548	666	693	659	677	724	854	877	835	740	
% of total known	1	1	1	1	1	1	2	2	2	2	
Not recorded or other <sup>4</sup>	421	713	429	2,614	2,936	5,548	9,973	3,481	4,522	10,391	
<b>TOTAL</b>	<b>53,931</b>	<b>51,926</b>	<b>55,698</b>	<b>59,847</b>	<b>60,080</b>	<b>58,439</b>	<b>59,882</b>	<b>58,104</b>	<b>58,810</b>	<b>59,541</b>	

Please see [Notes for Tables](#) at end of Chapter 5.

And, note the differences in missing sex data in 2017-18 above compared with 2000 below. It strongly appears that the ‘unknown’ 10K in 2017/2018 are very likely female - women. They changed (see above) this table’s title from sex to gender.

**Incidents of domestic abuse, by sex of victim and financial year, Scotland, 2000-01 to 2008-09**

**Table 3(a)**

**Number**

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Female	32,247	32,000	32,277	36,138	38,149	39,855	42,364	42,502	45,612
Male	2,873	3,210	3,550	4,040	4,957	5,448	6,004	6,753	7,908
Unknown	6	45	67	1,055	526	509	433	400	161
<b>TOTAL</b>	<b>35,126</b>	<b>35,255</b>	<b>35,894</b>	<b>41,233</b>	<b>43,632</b>	<b>45,812</b>	<b>48,801</b>	<b>49,655</b>	<b>53,681</b>

This is an incredible and profound change. And, latest figures available:

**Table 6: Incidents of domestic abuse recorded by the police, by gender of victim & accused, Scotland, 2009-10 to 2018-19 <sup>1, 4</sup>**

	Number & Percentage									
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Female victim, male accused	41,927	44,951	46,439	45,916	42,120	39,483	43,158	42,759	39,864	39,721
% of total known	82	81	81	80	80	79	79	79	81	82
Male victim, female accused	7,938	8,889	9,569	9,946	9,435	8,901	9,845	9,957	7,929	7,686
% of total known	15	16	17	17	18	18	18	18	16	16
Female victim, female accused	682	736	566	605	612	671	743	737	617	660
% of total known	1	1	1	1	1	1	1	1	1	1
Male victim, male accused	666	693	659	677	724	854	877	835	740	657
% of total known	1	1	1	1	1	2	2	2	2	1
Not recorded or other <sup>4</sup>	713	429	2,614	2,936	5,548	9,973	3,481	4,522	10,391	11,917
<b>TOTAL</b>	<b>51,926</b>	<b>55,698</b>	<b>59,847</b>	<b>60,080</b>	<b>58,439</b>	<b>59,882</b>	<b>58,104</b>	<b>58,810</b>	<b>59,541</b>	<b>60,641</b>

Please see [Notes for Tables](#) at end of Chapter 4

**60, 641** domestic abuse incidents and yet the Government is focussed on ‘hate crime’, and not why nearly **12,000** victim/accused sexes is not recorded (I have read the putative excuses, they do not fly). Twice the number of ‘hate crime’ total reports.

**COPFS 2019/2020:**

“Transgender identity (Table 5) In 2019-20, **41** charges were reported with an aggravation of prejudice relating to transgender identity, 1 more than in 2018-19. The number of charges reported each year was on a generally upwards trend until 2017-18, and has been steady at a slightly lower level over the last two years. However, the total number of charges remains small and is thus likely to be subject to fluctuation from year to year. Court proceedings were commenced in respect of **33** of the 41 charges.”

Table 5: Transgender identity aggravated crime Charges reported, 2010-11 to 2019-20										
Year	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20
Total number of charges of an offence aggravated by prejudice related to transgender identity	14	16	14	25	21	30	42	52	40	41
Decision on how charge will proceed (numbers)										
Court proceedings	14	12	11	22	18	20	31	34	30	33
Not separately prosecuted	0	*	*	*	*	*	*	6	*	*
Direct measures	0	*	*	*	*	*	0	6	*	*
Referred to Children's Reporter	0	*	*	*	*	0	6	*	*	0
No action	0	*	*	*	*	*	*	*	*	*
Awaiting decision	0	0	0	0	0	0	0	0	0	0
Decision on how charge will proceed (percentages)										
Court proceedings	100%	75%	79%	88%	86%	67%	74%	65%	75%	80%
Not separately prosecuted	0%	*	*	*	*	*	*	12%	*	*
Direct measures	0%	*	*	*	*	*	0%	12%	*	*
Referred to Children's Reporter	0%	*	*	*	*	0%	14%	*	*	*
No action	0%	*	*	*	*	*	*	*	*	*
Awaiting decision	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%

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Transgender charges 2019/2020 total is **41** down from 52 in 2017/2018 the years for which SG gives numbers most frequently. **33** in Scotland went to court (on past data probably mainly breaches of peace).

From the Crown Prosecutions Service Report for 2018/2019;

“The legal framework for hate crime does not require the police or CPS to establish the sexual orientation or transgender identity of the individual victim. The prosecution only has to prove that the offence was accompanied by a demonstration of hostility based upon the victim’s perceived sexual orientation or transgender identity or that the offence was motivated by such hostility.”

This highlights the ‘perception problem’ and another issue with data integrity. There is no way to know if this is actually transgender, or homosexual people – nor their actual sex or ethnicity, never mind any details. The CPS (like most of the institutions in Scotland) uses self-identification of ‘sex’ and has done for years -- but still have unknowns - go figure. They say this is “robust” at nearly 20% unrecorded and I am completely baffled how this is acceptable. Unfortunately, much of the time they use percentages and they

combine transgender with homosexuals (both sexes) and bisexuals (both sexes) as they were not separated prior to 2012, which I would have hopes someone genuinely concerned for LGB would have raised. They also use gender and then sex and both become muddled and meaningless. So basically their numbers are only a rough guide (age numbers maybe somewhat accurate) and one can see below the rise in 'female defendants' i.e. perpetrators a 13%+ increase in one year is significant – but are they female? And nearly half in the 'LGBT phobic grouping' have no recorded "ethnicity". There were nearly 1000 uplifts. I honestly do not know what to say about these reports I do not know if the lack of clarity and completeness, the lack of discrimination, the muddled presentation is intentional. It looks very much like on the data and reporting side there is ineptitude, under resourcing and underfunding but I get the 'feeling' there is also obfuscation and a lot of verbiage about 'fighting hate' but a general avoidance of documenting the problems (asking questions and verification). There is a 'definitions and categorisations' issue which I believe is one of the root problems. There is cowardice and a lack of political will to dedicate time and resources to the definitions, and draw lines, create and hold boundaries, and this is deeply concerning for Policing and Justice generally. Police may be more concerned with not 'upsetting' people than stating and recording facts. If the data is going to be worthless because you avoid sorting out the definitions and verification of facts then there is little point on expending money on IT systems and staff. (I get to use Garbage In Garbage Out, GIGO, after many years.)

From the same CPS report, p41 for 'LGBT'.

#### Gender

- In 2018-19, of the 1,713 defendants prosecuted, 1,444 defendants were male, 259 were female and in 10 cases, the gender was not recorded. Where the gender of the defendant was recorded, 84.8% were male and 15.2% female, an increase in female defendants from 13.5% in the previous year.
- For victim data, the Witness Management System recorded 1,526 victims. Of all victims, 779 (51.0%) were male, 567 (37.2%) were female and in 180 (11.8%) cases, the gender was not recorded. The recording of victim gender improved from 77.5% in 2017-18 to 88.2% in 2018-19 and is therefore robust enough to calculate proportions by gender accurately.

#### Ethnicity

- In 2018–19, 59.6% of defendants in cases flagged as homophobic, biphobic and transphobic were categorised as White (a fall from 63.0% in 2017–18), with 55.2% being identified as belonging to the White British category. 5.6% of defendants were identified as Black, compared to 7.6% the previous year and 3.6% were identified as Asian, a fall from 4.2% the previous year.
- Just under half of victim ethnicity (43.9%) is still not recorded and therefore the data is not included in this report.

With reference to the Commons Briefing paper on hate crime statistics from January, 2020 (see references at end) there was a 40% fall in the average annual number of hate crime incidents between surveys conducted in 2007/08 and 2008/09 (307,000 incidents) and in 2015/16 to 2017/18 (184,000). This is an enormous decrease. But note now, currently, multiple aggravators for a report are counted as separate incidents so the numbers are not comparable or clear (even over time for England and Wales). So one report could result in many incidents and are counted permanently without review or correction, even if the report was followed through and invalidated. The only number that has some value is the number of perpetrators that are charged or the number of charges for a single aggravator. Unfortunately, what is reported varies and the terminology varies. For example, I have always used 'an incident' to refer to the event and an event could have multiple reporters and hence reports, and multiple charges associated with one or more perpetrators, victims and witnesses, but by their counting the different aggravators as separate incidents it becomes a combined total of incidences of aggravators not incidents per se, this is a common thing to vary across forces - and this is just one example of the problems in terminology and reporting at the front end. The frequencies of types of crimes vary with population density.

In rural areas disability and transgender reports are higher while in cities it is race, religion and sexual orientation reports. I cannot find even this level of analysis for Scotland to date. I do not think this information is collected, collated and reported across Scotland by category, sub-category or traits, with any discrimination.

#### Third Party Reporting

I could not find data on the multiple Third Party Agencies employed/funded to 'report Hate Crime'. Nor could I find comparison studies or analyses of the efficacy of this method of reporting, or customer satisfaction. The use of Third Party Agencies is a concern. Apparently there is initial "due diligence" on Third Party Agencies but I have found no evidence of regular monitoring, analyses or verification and validation of their reports. To date there does not seem to even a central source of all approved Third Party Agencies, and many may have a vested interest in recording reports to maintain their staffing and ongoing funding.

#### COPFS:

C.12. The COPFS also publish charge level statistics in publications such as Hate Crime in Scotland and Domestic Abuse Charges reported to the COPFS. The counting base for these statistics is at individual charge level rather than case level. As Criminal Proceedings statistics only measure the main charge in a case it would be expected that the COPFS figures would be higher.

Criminal Proceedings Scotland 2017-2018.

Scotland: **Total hate crime charges 2019/2020:**

Year	
2010-11	5,332
2011-12	6,053
2012-13	5,408
2013-14	5,658
2014-15	5,208
2015-16	5,334
2016-17	5,037
2017-18	5,053
2018-19	4,686
2019-20	5,219

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Data main points:

- Little was ever collected and stored as discrete items of information, much is freeform with no rules, and little is indexed.
- From what I have read the percentage completion rate of even the basic data is unacceptably low, they do not have enforced completion of the characteristics and sub-characteristics already protected, incomplete or no cross referencing, resorting to ‘manual’ searches is common place (they do not seem to have the programming skills or/and there is just too much variation) and they rely on people having to read through records to count instances where something may have been recorded (and so, it appears they use samples and extrapolate, I have seen this mentioned in the statistics reports).
- Legacy data was not uploaded from old systems to new and historic data resides elsewhere (or is lost). This is a problem for tracking and identifying patterns of behaviour over long periods of time. (I suspect there are several issues in this area – and I try not to be cynical, but Bracadale was so very focussed on ‘one-offs’ as opposed to repeated behaviours/patterns.)
- There has not been well designed data collection form a substantial and reliable reference database that could be used for analysis and to draw conclusions, and we cannot compare between locations because no standard data collection policy was ever set.
- Counts of reports and incidents, charges and cases, are based on different methods, counts have included offences that have come and gone and require adjustment (due to the storage issue, and manual processes).
- We have no end to end statistics in one place, and cannot compare ‘calls’ through to convictions, or patterns over years.
- As the proposal has no data requirements, there is no intention to change the situation.
- Data accountability is not in this proposal.
- Both Scotland and England and Wales show decreases in crime generally and decreases in hate crime and this is without adjustment for population growth over the decades, so the decrease is probably greater still even when adjusted for age. (There are the problems touched on above about, what and how things were counted in the past and how they are now and from one area of the country to another, inter alia.)
- All the public money, millions, spent on campaigns, consultations, reviews and roadshows since 2015, and it is significant amounts, and the total number of hate crime charges has gone down, and is basically unchanged since 2010. Yet, the Scottish Government repeatedly refers to ‘under reporting’ without reference to the total expenditure of public monies over the last five plus years on “Hate” and “Hate Crime Reporting” and the questionable cost/benefit ratio. I hope they ask specific questions in their next survey on what the public think of this use of public money, the Hate ad campaigns and this proposal to make getting angry and an insult called a crime and the silencing of our speech for fear of prosecution.

The data case is not proven for the old statutory aggravators and the case for new and enhanced protections is not even attempted. That is, if you are someone like me who expects proposals to be supported by arguments and claims to be founded on data analysis based on verified and validated data from actual accounts, observations and events.

**Surveys**

The other Scottish Government sources referenced are consultations and survey data but there are serious deficits with the later datasets, including but not limited to insufficient coverage. No questions have been asked on newer characteristics, few on extant characteristics, and the use of leading and limited questions on a very limited and select sample. Basically, all the problems recognised in the use of surveys and more, and pertinently there is no published recent survey data. There are multiple references to this other source of data, the surveys, in most Scottish Government output on hate crime and when reading reports I did not

understand the constant references to a 2015 survey or earlier, and no references to a more recent contemporary survey. The three government websites were unhelpful but there is a recent FOI on this. From the Government response to the FOI; 2015 appears to have been a 'discrimination' survey.

Core module reports: Please note that the core module did not run in 2008, 2012, 2014 or 2018.

• Scottish Social Attitudes Survey 2019 ([forthcoming, September 2020](#)) • Scottish Social Attitudes Survey 2017

Topic reports

• Attitudes to violence against women in Scotland (2019) ([forthcoming](#)) • Attitudes to violence against women in Scotland (2014) [https://www.whatdotheyknow.com/request/670284/response/1599879/attach/3/Attachment%201%20Scottish%20Social%20Attitudes%20Survey%20Collections%20page%20on%20new%20gov.scot%20site.docx.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/670284/response/1599879/attach/3/Attachment%201%20Scottish%20Social%20Attitudes%20Survey%20Collections%20page%20on%20new%20gov.scot%20site.docx.pdf?cookie_passthrough=1)

For the [latest version](#) of the (very simplistic questions) SG provided in July, 2020 a version [from 2015](#) not updated since, so assume this was used for 2019 above, and it does not have relevant questions, see a clip from a recent FOI on the topics:

- **What are the names and provide links to the latest Scottish Social Attitude surveys that specifically cover, for each topic, below:**

1. Gypsies/Travellers
2. Sexual Orientation (specifically Heterosexuality. Homosexuality and Bisexuality, adult homo sapiens sexual attraction - NOT the T, not transgenderism, not genderism or other orientations)
- 3.a Transgenderism
- 3.b Cross dressing
- 3.c This second is important, I request specific precise references to the latest questions and responses on "cross dressing" where it is explicitly stated.
4. Gender Identity
5. Non Binary, and specific reference to questions and responses.
6. Variations in Sex Characteristics, and specific reference to questions and responses
7. Intersex / DSDs
8. Public displays of Sexual Fetish (any/all para/chrono philiias extant)
9. Religion
10. Race
11. Disability
12. Age

- **Please state clearly where a subject has not been surveyed, and explain why not especially when incorporated in older laws and importantly, when the characteristic/the category is incorporated in the proposed Hate Crime bill.**

The most recent Scottish Social Attitudes survey report that covers most of the characteristics listed above, with the exception of 5, 6, 7 and 8, was the 2015 attitudes to discrimination and positive action report (<https://www.gov.scot/publications/scottish-social-attitudes-2015-attitudes-discrimination-positive-action/>). The questions and response options for the survey are shown in the detailed tables annex: <https://www.gov.scot/publications/scottish-social-attitudes-2015-attitudes-discrimination-positive-action/pages/12/>. Please also find attached a copy of the 2015 Attitudes to Discrimination (see Attachment 2).

Broadly the same set of questions has been asked in 2002, 2006, 2010 and 2015. Asking the same questions at regular intervals provides valuable insights into how attitudes have changed over time. ScotCen works with the Scottish Government and key equality stakeholders, including the Equality and Human Rights Commission (EHRC), to develop and agree the questions to be included. The Scottish Government will be re-engaging with stakeholders to update these questions for the module re-running in 2021, and the Hate Crime and Public Order (Scotland) Bill will help inform our development of the new questions.

The Scottish Social Attitudes survey routinely collects data on religion (9), race (10), disability (11) and age (12) to enable exploration of attitudes to different topics by these and other demographic variables. SSA data is not usually reported broken down by religion or race because the sample size means that we cannot be confident enough in the reliability of the data broken down in that way.

SG FOI 2020 000 47245 13 July 2020

[https://www.whatdotheyknow.com/request/670284/response/1599879/attach/5/finalResponse%20202000047245.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/670284/response/1599879/attach/5/finalResponse%20202000047245.pdf?cookie_passthrough=1)

In 2020, (as it did in 2016 and 2018) the Scottish Government is using the results of a **2015 survey that did not ask questions on the characteristics covered in this Hate Crime proposal.**

**The Scottish Government states that this Call for Input or Evidence will inform the questions to be asked in a survey to be done in 2021 - while also stating it is progressing this bill through Parliament.**

And, looking to see what other sources there may be as several of the characteristics are already protected characteristics in the Equality Act (2010) - I assumed the Equality and Human Rights Commission EHRC would have teams or Working Groups concerned with these and covering the hate and prejudice issues. Apparently they have a working group on "Gender Reassignment" since July 2018 (2 years +) and a group on "Race" but no work ongoing on the other current characteristics or the putative new ones.

**Which protected characteristics do not have a specific working group and why?**

The following protected characteristics do not have a specific working group but each have their own designated Lead Officer/s.

- Age – Children
- Age – Older people
- Disability
- Pregnancy and maternity
- Religion or belief
- Sex
- Sexual orientation

Our objectives in establishing protected characteristic (PC) leads are to enable the development of greater expertise within the Commission about key issues, context, legal framework etc. in relation to each protected characteristic, and to

EHRC FOI 1516 02 July 2020

[https://www.whatdotheyknow.com/request/668865/response/1594551/attach/5/FOI1516%20Hamilton%2020200702%20Response.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/668865/response/1594551/attach/5/FOI1516%20Hamilton%2020200702%20Response.pdf?cookie_passthrough=1)

I find it odd that Scotland considers this new proposal on hate crime so important but EHRC does not consider any of the above needs a working group. The very lowest incidence of crime is the transgender category but Gender Reassignment has a Working Group ongoing. As one cannot 'reassign gender' and one cannot actually change sex that could be fundamental, or it could simply be that this area of Genderism constantly gets more attention than most.

In conclusion.

- They do not have and are not collecting appropriate detail to formulate useful statistics from the institutions to support current hate crime characteristics and have produced no data to support the new proposal, There has been next to no data analysis produced oriented towards validating the efficacy of the existing law and none produced to support the new proposals.
- They have over weighted (and I would suggest misrepresented) input from surveys. They have no relevant current input from Scottish surveys where clear questions were asked on the content of this proposal, none.
- The input from consultation on this proposal has been dismissed without genuine arguments and rebuttals, the public; individuals have rejected this proposal while organisations are more in favour. There is no published analysis of why the organisations are so in favour of this proposed law, and no validation of their claims is provided.
- There has been significant funding of the third sector and multiple campaigns over years, to encourage reporting. However, charges have decreased. The Scottish Government continues to claim under reporting but has not substantiated this claim.
- The necessity, the requirement for the 'stirring up hate' expansion is not given. They give no examples, no evidence whatsoever of the need for this law.
- This is the very opposite of 'evidence based policy' or design from first principles.
- All the data I have seen suggests the proposal is a waste of time and money and any positives are far outweighed by the negatives; the threats to freedom and community cohesion and the social contract which are substantial and growing.
- It looks as if the 'transgender' topic has used a vast amount of time and resources, and an unwarranted amount of attention, with no basis for extra and special protections.
- There are other areas that must be the priority for resources and attention, the increases in disability and sexual orientation incidents need study, and that requires allocated resources for data collection and analysis. Apparently hate crime law has not been the solution and an alternative approach is required. I can think of potential reasons for sexual orientation, including increased reporting but also the excess of Prides, days and months, possibly over saturation, and Genderism which has been

intentionally conflated with lgb. The disabled situation I do not understand and I suspect it is much less straightforward and this 'standardised' proposal will do little.

- The Domestic Abuse missing data must be a serious concern as well as the extent of this problem.
- Bracadale recommends the new laws, this current proposal, as a way of instituting and improving data recording but that is not a rational way to use laws or to substantiate the creation of laws in the first place. But, there is no Data Accountability in the proposal.
- One must ask of current offences of hate and prejudice what purpose they serve and are they necessary. The case for their continuance is unproven, it looks unlikely. For the new proposals there is apparently no case.
- Bracadale states "Hate crime can fulfil a symbolic function in stating society's disapproval of the deliberate targeting of a member or members of a particular protected group. It is important to send a message to victims, offenders and wider society that hate crime behaviour will not be tolerated. While, of course, hate crime legislation on its own cannot change minds, it has the potential to contribute to long-term cultural change and the acceptance of diverse communities." I completely disagree. I do not want to live in a society that has this attitude to law or its citizenry. Bracadale does not say what cultural changes he has in mind and I certainly don't want the 'cultural changes' that this law brings.
- This proposal for new law appears to be purely politically motivated and fundamentally the motives strongly appear to be virtue signalling and fear mongering, and to silence and intimidate. This must be solidly rejected.

#### Addendum:

*One designs and implements well designed data collection, processes and procedures and appropriate staffing to enter all the desirable and relevant and potentially useful data for all reports to the Police, and for all charges. One implements a flexible but firm system to ensure valid and complete data, one only summarises when extracting and reporting. One automates, one uses databases, indexing and cross referencing. One integrates systems in-house and from end to end. Then, on that rich data one performs data analyses, one can then identify trends and what may need special attention. On that basis one can form potential solutions based on accurate information. Law should not be used as Bracadale and the Scottish Government recommend.*

From Bracadale: *Practical benefits*

2.18. Having specific hate crime legislation requires sentencers to take the aggravation into account in sentencing and the court to record the aggravation. **This means that it will feature on the criminal record of the perpetrator and may be taken into account in the event of repeated offending. In addition, the maintenance of records provides statistical information which gives an indication of the scale of the problem and allows the monitoring of trends.**

Bracadale, page 15:

3.8. The threshold of evincing malice and ill-will, or *demonstrating hostility*, **may well catch words uttered 'in the heat of the moment'. But that should be no excuse.** This threshold does not require the court or jury to make a judgment about the accused's character generally; **what is significant is the fact of what has been said (or otherwise evinced) and the potential impact that has** on the victim and the wider group who share the relevant protected characteristic. It is worth remembering here that this is not just a question of a person demonstrating hostility or using bad language towards another. The underlying conduct must amount to an offence (for example, threatening or abusive behaviour, contrary to section 38 of the Criminal Justice and Licensing (Scotland) Act 2010). The significance of the demonstration of hostility is that it highlights the context of that offending behaviour. **The impact of a particular remark or action has to be taken into account: it upsets people in a direct way and targets the core identity of the individual or group. It is vital to send a message that this will not be tolerated or shrugged off as 'mere banter'.** To do that risks undermining the principles of equality and respect.

## Part 3: Particular Problems

### A) Creating an Appetite, manipulation of the public response

There are numerous incentives in this proposal that will encourage support by the unwary, the most obvious being the repeal of the Blasphemy Law or the suggestion that misogynistic harassment may be added later. Abolishment of the offence of Blasphemy from common law could easily have been progressed on its own cleanly and simply but it was not, and obviously there must be reasons why it is tied into this proposal. Sex, women's rights, misogyny, and harassment are far, far bigger issues and are in this proposal, a distraction from real issues of crimes against women, the idea of a future potential hate crime is rejected, and the subject is considered out of scope though very much intertwined with the Trans (and sex) issues that are being covered above and below.

This 'planned' expansion to an increased number of characteristics protected by this proposed law, while also increasing the seriousness of what were originally statutory aggravations into offences, and which covers everything from a one off instance of name calling to seven years in prison, is just one major problem. The characteristics themselves are not limited to physical provable characteristics like skin colour or disability but also increasingly from the Gender Recognitions Act (2004) on to include self-identifications and legal fictions, through the Offences (Aggravations by Prejudice) (Scotland) Act 2009 to include sexualities, and to include hobbies or fetish and micro-fetishes and self-claimed labels; promoting a hierarchy of claims and competition between claims, and the number of minority statuses or 'vulnerabilities' one can, could or might want to claim.

Worryingly this encourages in the more casual reader and in the public generally an immediate reaction of 'if them what about me/this' responses. For example, it encourages the questions such as occurred 'Why are black people seemingly protected against

insult but not gay men?’ and now ‘Why are attacks on old people (age) more serious, recognised in law, but not the short or fat?’, ‘Why men in frocks and non-binaries but not punks, emos, ravers and Goths?’, ‘If sex is going to be added and misogyny just for women - what about misandry? And, on and on, to infinity. An appetite is being encouraged for legislation and coverage of each and every possible grievance, or potential victimisation, every sub-culture and every trait and personality; every dissatisfaction, and what it means bottom line is support for increasing authoritarianism with little, if any, appreciation of the dangers.

This is unhelpful, creating more and more disunity and tribalism, ‘stirring up’ the very thing these laws pretend to deter, what they say they aim to control. I ponder how intentional this encouragement is and if there is conscious intent behind this scheme. The number of characteristics, traits, and fashion trends alone and in combination that could be seen to require protection is near infinite in humans. I must question why anyone would think this desirable, or encouraging of social cohesion.

## **B) Corroboration / Evidence, potential manipulations.**

I take serious issue with the ongoing agenda to drop the requirement for corroboration. More specifically there must be evidence, at the very least in solid support of the character of the complainant, victim, witness or reporting agent/agency, and their lack of ulterior or other motives, and any patterns of reporting must be constantly looked for (this requires data which we see above is missing and not being collated). This assumption that anything anyone reports is accepted as an incident (not just a report but a hate crime) is absurd, when it obviously could be simple misunderstanding or could be used from a place of malice and ill will in the one reporting and more. It can be used to manipulate statistics, funding, and trends to the advantage of a group or organisations and to the serious disadvantage of the individual, and other groups or organisations; one witnesses this already. The idea that one could have a criminal record because someone simply decides to claim or even actually ‘perceive’ insult is more than a ‘chilling effect’ it is terrifying and open to misuse by individuals and authorities. I see all too readily the potential and the will to prosecute to ‘set an example’ and send a ‘strong message’ -- and to silence dissent of any kind. I see no good outcomes from the threat inherent and imbedded in this proposed law and the unfair power given to ‘complainers’ and can see its implementation angering the citizenry and creating division. Enforcement, threat and intimidation are not going to build a better more cohesive society it creates resentment, and fear.

## **C) Undue, unwarranted influence, capture, manipulation. ‘Intersexuality’ -> ‘non-standard male or female’; including Lack of definition/meaning.**

It is my contention there has been undue and very detrimental manipulation of the Scottish Government and politicians over the last decades, including but not limited to, intentional misdirection and misinformation and inexpert unfounded advice, and that both the government and our institutions have been ideologically captured. I will evidence an example below. I am deeply concerned by the overweening influence of government funded (and internationally funded) lobby groups particularly Stonewall (Stonewall Equality Limited, including ‘Stonewall Scotland’) which seems to have been allowed to embed itself across the board, and it is deeply disconcerting to see Stonewall Diversity Champion logos on so many publications associated with and from our Criminal and Justice systems particularly.

It is not only Stonewall, other Trans focussed organisations are influential without qualifications or expertise including the Equality Network (and its Scottish Trans Alliance and Intersex projects), and so many more groups that work in concert; LGBT Health and Wellbeing, LGBT Youth Scotland, Gendered Intelligence, Mermaids, Press for Change, All about Trans, Trans Media Watch, On the Road media, TGEU, ILGA, WPATH, EPATH, and more. I have covered Disability in the Introduction as I believe it must be separate. I recommend the repeal of the 2009 Act as soon as possible without replacement for ‘transgenderisms’.

*Note: Transgenderism is referred to as Genderism or Gender ideology and sourced in Queer Theory, Social constructionism, deconstruction, POMO, plus, and the apparent (superficial) focus is Gender, on the denial of sex, of material realities, and an emphasis on Gender Identities, as part of what is at the international and United Nations (UN) known as SOGIESC (Sexual Orientations, Gender Identity and Expression and Sex Characteristics). Transvestites (TV), and transsexuals (TS) the latter particularly were ‘introductory’ the wedge or veil, not truly a part of the final form of the agenda (or ‘acronym’). Many TS acknowledge and accept their biological sex and reject Genderism, but actual transsexuals are few in number. The gender critical (GC) TS are bullied by Trans activists and allies (TA) as ‘truscum’ or ‘transmeds’.*

*Also note, Non-binary (NB, enby), previously hidden and obscured as/by “intersexuality” etc. in 2008/2009 was previously called ‘Androgyne’ and ‘Polygender’ in Trans terminology. The meaning of NB and its minimal expression currently tends to be very different for different age groups.*

## **Offences (Aggravation by Prejudice) (Scotland) Act 2009**

Original Bill: Patrick Harvie, MP Scottish Green Party

Passed 3<sup>rd</sup> June, 2009. Royal Assent 8<sup>th</sup> July 2009. Version of 24<sup>th</sup> March, 2010.

I was not aware of this law until three years ago and was and still am disconcerted by the Transgender contents, by its flaws and the introduction into Scottish law of an ideology so opposed to sense. Apparently there was no expert or informed reviews of this law and parliamentarians passed this law with more than one glaring mistake. I cover the problem in detail because very similar problems exist within the proposed bill.

“Whilst the wording of the 2009 Act reflected understanding of the position at the time of enactment, this is no longer the case.” This from the information note is false. This bill was drafted this century and no one outside the closed loop of Trans lobbyists and government referred to “intersexuality” for ‘intersex’ (intersex conditions) or thought it part of or similar to ‘transgenderism’ (*there has however been an explosion in its use and definition as meaning intersex online last years, similar to the trans/transgender explosion, and misuses of ‘inter’ and ‘trans’ and ‘cis’.* This has been driven by TA, and corporations, including Google), inter means between, and intersex conditions are not in or between or actual sexualities. The Scottish Government seriously needs alternative, more credible advisors, and expert in-house staff. The Scottish Government and Patrick Harvie MP in particular must take responsibility and be held accountable for misinformation and misdirection. This law was written and passed in 2009 and therefore this ‘mistake’ is inexcusable. There is no reference in the explanatory notes or background information to any review by those with intersex conditions, Disorders of Sexual Development (DSD) or their representatives, nor by geneticists, or sexual development or sexuality/sexual deviance authorities or researchers, or anyone with medical or psychiatric expertise in the area. Intersex has been known not to exist for many, many decades (similar to hermaphrodites who also do not exist, and why it has long been referred to as ‘pseudo-hermaphroditism’ and is now other than in EUROCAT, redundant). Everyone has a sex, and no one has two or none, and civil servants should have known this and know this, and intersex has long been a redundant term, simply a misnomer used colloquially, generally, useful but inaccurate. Intersexuality has never been a term in this context by the informed, and I have never seen Variations of Sexual Characteristics (VSC) used outside of government, and it is solidly aligned with SOGIESC (see Yogyakarta Principles+10). VSC appears to be a Trans term and as with ‘intersexuality’ and gender identity; a Trans Trojan horse. The Scottish Government I am certain has been informed about DSD issues and the misuse of ‘intersex’ by the Trans lobbyists many, many times over the past years. They have been questioned on their continued funding of the Equality Network for their unproductive and inexpertly staffed ‘Intersex Project’. Most people with a modicum of education know sex is not a spectrum or continuum but the Trans Activists have and continue to use non-existent ‘intersex’ people and chromosomal and endocrine and DSDs to mislead and confuse the ignorant. In 2020 in the Policy Memorandum the Scottish Government still defer to an organisation that has proved itself to be inexpert and unreliable, focussed on its own agenda without integrity, and the Scottish Government persist in ‘muddling the issue’.

*(EUROCAT is the European Network of population-based registries for the epidemiological surveillance of congenital anomalies.)*

From the Policy Memorandum:

216. Some respondents, including the organisation ‘dsdfamilies’, argued that the creation of a separate intersex/variations in sex characteristics category was neither appropriate nor helpful when wider consideration of intersex issues was needed. However, the Equality Network welcome the inclusion of intersex/variations in sex characteristics as a separate category within hate crime legislation. They believe that ‘intersex’ people, or people perceived to be intersex, can face ‘intersex-phobic hate crime’.

217. In one of its hate crime research reports, they found that 29% of intersex respondents had experienced hate crime based on being intersex (although noting the small number of respondents). However it states that more research is needed into intersex specific hate crime.

218. It is also worth highlighting that a number of respondents to the consultation expressed a preference for the terms, ‘differences in sex development’ or ‘variation in sex characteristics’ as opposed to the term ‘intersex’, which they indicated covered a very wide range of conditions.

Policy Memorandum

I have known people with chromosomal variants and DSD and the only misuse and abuse I have ever seen specific to their condition is by TA and advocacy groups. The false information and the dishonest portrayal of these conditions has been deeply unpleasant, cruel, and is ongoing. They have a sex, and it is not directly correlated to a sexuality or claiming ‘trans’. They do not disprove the sex binary and I have been assured the National Health Service in Scotland does not operate on genitalia simply to conform to gendered genital aesthetics on babies but simply to aid/allow function. Unfortunately, among Trans identifying online I have seen many falsely claim ‘intersex’. The amount of misinformation encouraged by Trans lobbying organisations is unsettling, especially when many online and in real life seem to be incredibly ignorant of basic anatomy, physiology and reproduction. Transgenderism is not a sexual orientation per se though many of the behaviours grouped under transgender are fundamentally sexual in nature (i.e. paraphilias) and this is important.

The Equality Network which includes the Scottish Trans Alliance Project has been near fully funded by the Scottish Government/ Scottish Executive from early 2003 (£46K, 2004, £60K) to date (2020, £495K+). I will not expand in detail on the following excerpt the manipulation is clear.

The Equality Network had been lobbying for hate crime legislation for several years and was assisting Green Party MSP Patrick Harvie to draft a hate crime members’ bill at the Scottish Parliament, so we were able to be fully involved in this process. At the same time, we wanted to improve recognition that some transgender people do not identify with the binary option of man or women.

We saw the hate crime legislation as an ideal opportunity to seek to establish the concept of non-binary gender identities in Scots law. It was a hard sell to civil servants, who initially though ‘transgender’ was ‘synonymous’ with ‘transsexual’, but we succeeded in securing the groundbreaking line ‘any other gender identity that is not standard male or female gender identity’ in the Offences (Aggravation by Prejudice) (Scotland) Act (2009).

“A key way we secured this was by providing civil servants with examples of non-binary-hate incidents, including verbal abuse such as ‘Oi, freak, are you Pete Burns’ love child?’”

James Morton, Manager, Scottish Trans Alliance Project, Equality Network.

*Trans Britain; Our journey from the shadows, Ed. Christine Burns (2019), p.240.*

In 2008 ‘non-binary’ was not known or used in Scotland except perhaps in this Trans strategy group; it was hardly mentioned until post-2013. The non-standard and ‘intersexuality’ was never about those with chromosomal differences and DSDs it was and is to solidify Genderism in Scots law, to replace science and particularly biological fact with pseudo-scientific notions of gender, and frighteningly to silence questioning and opposition through Hate Crime law.

“The term ‘variations in sex characteristics’, as opposed to ‘intersex’, is used in the Bill as this term is more commonly used by stakeholders.”  
Information Note, Transgender.

No, this is not true, and the Scottish Government must identify these stakeholders and this ‘common’ usage with multiple examples from real life. The Equality Network only very recently changed its Intersex Project to Intersex/VSC and I have never really seen this used elsewhere. The Equality Network is totally focussed on Genderism and has little interest in DSDs etc. except where it can be used to achieve their long term goals. The Equality Network and its projects have never, not to date, requested any reports whatsoever from NHS NSS (FOI-2020-000118, 30/03/2020) on indeterminate sex and congenital anomalies data for Scotland.

Cross-dressing cannot be defined, it is completely time, place and fashion dependent. I have had male friends who wear skirts, thobes, and others who wear kilts regularly, while I never wear skirts, and much of my clothing is made for men. I hardly know anyone who wears dresses day to day save transsexuals and the ones I know tend to wear jeans. I do not think the people I have known are that unusual -- and not one is ‘a cross-dresser’. I think this is the ‘dated’ term for what is a sexual fetish and known more commonly today as autogynophilia (AGP). I reject this undefined vague ‘cross dressing’ and strongly reject the special protection of sexual fetishes in law.

Wider society knows the difference between gay and straight, but I doubt you could find anyone able to define VSC or using the term (or gender identity, or any of the 300 genders). The Trans murder, assaults and abuse claims for Scotland have been grossly exaggerated, and are in the main false (see above, The Data Problem). There has never been an ‘intersex abuse’ problem, or a ‘non-binary abuse’ problem that I have found evidenced. You cannot tell a “non-binary” (or intersex) person unless they tell you, so random abuse in the past or now is near impossible.

*Note: I believe Patrick Harvie now calls himself non-binary, as does Dundee’s Gregor Murray, also non-binary claiming is Oceana Maund of Scottish Trans Alliance (though I was near certain previously a transwoman). I do not believe anyone would not see them as male. They are men. Identifying as Ace or Aro-spec was becoming popular more than non-binary (NB) among the students last year. How can the Law be ‘kept up to date’ with online driven labels and language trends, it must be factually based using clearly defined terms with pedigree.*

## 5 October, 2016: Action Plan Trans and Intersex Action 13

We will review and reform gender recognition law so it is in line with international best practice for people who are Transgender or Intersex. This is a complex area of policy, so we will first undertake a full and wide ranging consultation on reforming the Gender Recognition Act. This consultation will be launched by summer 2017. It will cover establishing new arrangements for dealing with applications for legal gender recognition and the minimum age at which applications for gender recognition could be made. We aim to take action in response to the consultation shortly afterwards, with arrangements in place by 2020.

<https://www.gov.scot/publications/fairer-scotland-action-plan/pages/7/>

## 2009 Act 2:8.

(8) In this section, reference to transgender identity is reference to (a) transvestism, transsexualism, intersexuality or having, by virtue of the Gender Recognition Act 2004 (c. 7), changed gender, or (b) any other gender identity that is not standard male or female gender identity.

<http://www.legislation.gov.uk/asp/2009/8>

Explanatory Notes.

These Explanatory Notes have been prepared by the Scottish Government on behalf of Patrick Harvie MSP, the member in charge of the Bill for the Act. They have been prepared in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.

15. Subsection (5) requires that, ..... the offence was aggravated by prejudice related to sexual orientation or transgender identity.

16. Subsection (7) defines what is meant by sexual orientation in the Act. This is heterosexuality, homosexuality or bisexuality.

17. Subsection (8) provides the definition of transgender identity for the Act. The definition gives four specific examples: transvestism (often referred to as ‘cross-dressing’); transsexualism; intersexuality; and where a person has changed gender in terms of the Gender Recognition Act 2004.

However, the definition also extends expressly to cover other persons under the generality of broad reference to non-standard gender identity. For example, those who are androgynous, of a non-binary gender or who otherwise exhibit a characteristic, behaviour or appearance which does not conform with conventional understandings of gender identity.

<http://www.legislation.gov.uk/asp/2009/8/notes/contents>

In 2020 NHS Scotland is best practice re. ‘intersex conditions’ I believe we continue to help those from overseas who require specialist treatment. The Scottish Government is still unable to give meaningful definitions for, or provide evidence of, transgender or gender identity, and there is no “conventional understanding”.

288. The Bill ensures that characteristics currently protected within the hate crime legislative framework continue to be protected to the same extent with updated language provided where considered necessary. This will ensure that the language used in the Bill reflects

changes over time and that the individuals who are afforded protection by the law recognise themselves in the terminology used.

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Genderism:

- The ongoing requirement for this extra ‘protection’ has not been substantiated and the threat to free speech threat is real and well evidenced, as are the particular threats to women and the young. As for updating the language, intersexuality was never a thing, and law is not meant to keep up with ‘trends in trans’ nor should the law allow first woman and man to lose meaning, and now male and female. Provide substantive logical definitions for the terms first then use in laws. If you cannot, define a term meaningfully without self-reference it is invalid and must not be in legislation. One cannot change sex so male-to-female or vice versa is nonsense.
- Not one example is given of non- typical physical and biological characteristics for male and females. There is no supporting data for the population size and how the categorisation is determined.
- ‘Cross dressing’ as used is a paraphilia. There is no argument or evidence for the special protection of this sexual fetish.
- With reference to how these responses will inform the next survey I do hope the government ensures that attitudes to public displays of fetishes are covered in the new survey including the fact that if they perceive you have insulted them it is a ‘hate crime’. The options for fetishes should be interesting, as will be the responses.
- A data gathering exercise should have been professionally undertaken to support this new law (for example, via Police Scotland Incident reports at the very least, for each sub sub category). There is nothing of substance.
- The Scottish Government must identify more reputable and better informed sources of advice.

#### D) Signals and symbols

There are multiple references in the related Scottish papers to the symbolic function and educational purposes of these laws, of the proposed law, which again highlights the political and ideological purpose. We must reject this manipulation. I strongly reject symbolic function and educational claims as sound justification for law, or as the purpose of law and this policy of “sending strong messages” through law. I suggest the proposers are being disingenuous about what this bill actually conveys to the public and who it benefits.

The overuse, the continued accusations of prejudice and hate directed at the Scottish public through the policy statements, campaigns, and this proposal, inter alia, are unfair, unjust and unsupported by evidence.

Crime is decreasing, Scotland is increasingly a non-religious country, and even with substantial public monies spent on increasing the reporting of ‘hate crime’ there has been little substantial change, and one must ask what is the true purpose and what positives for Community Cohesion do these accusations against the whole community serve. This is a major attack against the citizens of Scotland and the human right to speak, to express oneself and to criticise, to ‘offend’ or ‘insult’, whether it be with facts, truths, observations, opinions, books, plays, performances, parody or jokes (no matter the quality).

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[\*] Disability/Vulnerability/Competence

*It is the responsibility of adults in a civilised society to safe guard those with immature, limited or diminished competence and to accept the challenge of drawing boundaries, based on the history, knowledge and experience of humans and the best current peer reviewed independent research, to protect them and others from harmful acts. But, this proposal does not recognise the rights of adults to autonomy and is falsely declaring harm and abuse and offence which cannot be avoided in living a full life. Insults and disagreements and what some determine wrong opinion or wrong think cannot be prosecutable offences, and sadly distracting attention and resources from genuine acts of physical and mental harm. This is why I have concentrated on Genderism above, it has and will cause more physical and psychological harm, and has already resulted in more threat, intimidation and silencing of the rational than is possibly caused by the supposed insults and abuse they claim to receive. The data supports this as there is minimal serious crime against ‘trans’. We all have the same rights, and genuine criminal acts should be investigated and prosecuted equally across the board equality is equal access to justice and not the intimidation and threat and the possibility of being prosecuted as ‘an example’ because some take offense at ‘everything’ that they do not like. The Government’s priorities are seriously askew.*

## MAJOR REFERENCES used throughout.

References to ‘**Bracadale**’ throughout refer to the Bracadale Report officially titled the *Independent review of hate crime legislation in Scotland: final report*, 31 May, 2018.

<https://www.gov.scot/publications/independent-review-hate-crime-legislation-scotland-final-report/>

References to ‘**Morrow**’ refer throughout to the *Report of Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion*, published 23 September, 2016. Dr Duncan Morrow chaired the Advisory Group. This report led to the Bracadale exercise which had a very specific remit. Morrow very clearly raised that there was a significant lack of quality data and that data collection and analysis was highly recommended, indeed required. This basic problem persists but is ignored in reviews and recommendations and in the progress of this bill. This is a significant concern. See below. (N.B. the gypsies and travellers issue which is nowhere referenced in the proposal and not a race/colour/nationality/citizenship/ethnic/ national origins was probably the major ‘prejudice’ in the surveys discussed.)

<https://www.gov.scot/publications/report-independent-advisory-group-hate-crime-prejudice-community-cohesion/>

References to ‘**Law Commission**’ relate generally and specifically to the efforts, the review underway currently (following on from the delivery of 28<sup>th</sup> May, 2014) England and Wales. The independent review of current ‘hate crime’ law announced 18<sup>th</sup> October, 2018 (Ormerod QC, Law Commissioner). Delayed.

<https://www.lawcom.gov.uk/law-commission-review-into-hate-crime-announced/>

Hate Crime in Scotland 2019-20 Published June 2020

<https://www.copfs.gov.uk/images/Documents/Statistics/Hate%20Crime%20in%20Scotland%202019-20/Hate%20Crime%20in%20Scotland%202019-20.pdf>

Hate Crime in Scotland 2018-19

<https://www.copfs.gov.uk/images/Hate%20Crime%20in%20Scotland%202018-19%20PDF.pdf>

Police Scotland Data Problems February, 2019.

Hate crime: availability of information recorded by the police in Scotland Published: **27 Feb 2019**

<https://www.gov.scot/publications/developing-information-hate-crime-recorded-police-scotland/>

“Scottish Government statisticians are continuing to engage with Police Scotland as they develop the information they hold on hate crime.

It is anticipated that a report on the findings of this exercise will be published in 2020” SP67 Memo

<https://www.copfs.gov.uk/publications/equality-and-diversity>

Hate crime: a thematic review of the current evidence, Research Report 102 Authors: Olivia Hambly, Joanne Rixom, Shivani Singh and Tamsyn Wedlake-James October 2018

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/748140/hate-crime-a-thematic-review-of-the-current-evidence-oct2018-horr102.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748140/hate-crime-a-thematic-review-of-the-current-evidence-oct2018-horr102.pdf)

Criminal Justice Disability Project Final Report June 2018

[https://www.copfs.gov.uk/images/Documents/Equality\\_Diversity/Criminal%20Justice%20Disability%20Projects%20-20Final%20Reports%20June%202018/CJDP%20Final%20Report%20for%20publishing%20June%202018.pdf](https://www.copfs.gov.uk/images/Documents/Equality_Diversity/Criminal%20Justice%20Disability%20Projects%20-20Final%20Reports%20June%202018/CJDP%20Final%20Report%20for%20publishing%20June%202018.pdf)

Hate Crime Statistics, 28<sup>th</sup> October, 2019, Grahame Allen, Yago Zayed

<https://commonslibrary.parliament.uk/research-briefings/cbp-8537/>

Hate Crime Briefing Paper Tuesday, January 14, 2020

<https://commonslibrary.parliament.uk/research-briefings/cbp-8791/>

Hate Crime: What do the stats show? Yago Zayed, 8<sup>th</sup> April, 2019.

<https://commonslibrary.parliament.uk/home-affairs/crime/hate-crimes-what-do-the-stats-show/>

Re. Data E&W and Scotland specific examples and similar data issues will be covered later.

Statement re Gypsies and travellers 23 October 2018: Example.

<https://www.gov.scot/publications/tackling-negative-attitudes-towards-gypsy-travellers-joint-statement/>

“This programme of work is sanctioned by the [Ministerial Working Group on Gypsy Travellers](#) and COSLA’s Community Wellbeing Board, and will underpin a further set of actions designed to improve outcomes for the Gypsy/Traveller community in the key areas of accommodation, education, poverty and health. These further actions will be published in early 2019. There is no place in 21st century Scotland for **racism** and our shared aim is to ensure discrimination towards the Gypsy/Traveller community is eliminated, with a full support and leadership of our public services. Scottish Government, COSLA and Police Scotland, 23 October 2018”

*(To my knowledge the bulk of travellers in the UK are Irish travellers, others are of the group ‘new age travellers’ there have been very few Roma or ‘Gypsies’ travelling - for many decades. Travellers are not a different race and rarely are the difficulties between settled and travellers related to ‘protected characteristics’.)*

Academic Freedom (university statutes) and,

England and Wales: Section 43 of the Education (No2) Act 1986:

Equality and Human Rights Commission Guidance:

“Academic freedom relates to the intellectual independence of academics in respect of their work including the freedom to undertake research activities, express their views, organise conferences and determine course content without interference” “as part of their duties under Article 10 and the s.43 duty, (universities) must protect freedom of expression of academic and staff”

Scotland: Further and Higher Education (Scotland) Act 2005 Re. Academic Freedom: (4) “within the law” to do \_

- a) hold and express opinions
- b) question and test established ideas and received wisdom
- c) develop new ideas or innovative proposals
- d) present controversial or unpopular points of view

Note: Possible constraints currently Equality Act (2010) and The Public Sector Equality Duty.

**Human Rights Act 1998:** (compliance with European Convention on Human Rights to a certain extent)

2 Interpretation of Convention rights.

(1) A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any—

(a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,

- (b) opinion of the Commission given in a report adopted under Article 31 of the Convention,
  - (c) decision of the Commission in connection with Article 26 or 27(2) of the Convention, or
  - (d) decision of the Committee of Ministers taken under Article 46 of the Convention, whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.
- (2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.
- (3) In this section “rules” means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this section—
- (a) by F3. . . [F4the Lord Chancellor or] the Secretary of State, in relation to any proceedings outside Scotland;
  - (b) by the Secretary of State, in relation to proceedings in Scotland; or
  - (c) by a Northern Ireland department, in relation to proceedings before a tribunal in Northern Ireland—
- (i) which deals with transferred matters; and
  - (ii) for which no rules made under paragraph (a) are in force.

*ARTICLE 9* Freedom of thought, conscience and religion

1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2 Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

*ARTICLE 10* Freedom of expression

1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

*(ARTICLE 10 (2) IS USED IN SUPPORT OF THE PROPOSALS BY SG)*

*ARTICLE 11* Freedom of assembly and association

1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

***ARTICLE 17* Prohibition of abuse of rights**

**Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.**

GRC Statistics link:

<https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2020>

Total GRCs to date not stated. On currently available figures total is **5,597** up to but not including first quarter this year.

EoF.