

**JUSTICE COMMITTEE****HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL****SUBMISSION FROM THE COALITION FOR RACIAL EQUALITY AND RIGHTS (CRER)**

Thank you for the opportunity for the Coalition for Racial Equality and Rights (CRER) to provide oral evidence around the Hate Crime and Public Order (Scotland) Bill on 17th November 2020. During the session we noted that we would write to you further on a number of issues, and information of these is provided below. We have also included additional information on certain issues that were not directly raised in our evidence session but which we argue are of importance when considering racial hate crime.

**Retaining Section 50A**

In previous evidence sessions those providing oral evidence have been asked if Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 should be retained. As you are aware, Section 50A focuses on racially aggravated harassment, yet the same question was not asked of our panel which comprised of race equality organisations. In short, we are happy that the Scottish Government has decided to retain Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 and our response to the Scottish Government's initial consultation on amending the hate crime legislation outlined our reasons why we were (and still are) against repeal (see [here](#)).

However, in light of arguments that have been presented both in Lord Bracadale's review and in the evidence sessions which advocate the repeal of Section 50A, we would like to reiterate that repeal could create a gap in law and that Section 50A is well used – as highlighted by the charges and convictions data in our submission.

In particular, it has been discussed that an alternative to Section 50A could be Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 combined with a racial aggravation. We would highlight that Section 50A may prohibit racist behaviour that causes "alarm or distress", even if the offender has no intention to cause that "alarm or distress". This is because Section 50A(1)(b) notes that a person is guilty if he "acts in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress". Section 38, however, requires an offender to either specifically intend to cause "fear or alarm" or be reckless about causing "fear or alarm". Our concern is that repealing Section 50A and utilising Section 38 could give offenders too much leeway to argue a lack of intent.

## **Financial Memorandum**

In our written submission, we argued for a reporting requirement to be embedded in the Hate Crime and Public Order (Scotland) Bill which includes a provision where Scottish Ministers would be required to report annually on the offences outlined in the Bill. We also argued that there should be a duty for Scottish Ministers to promote hate crime reporting which includes a provision for the formation of a strategy. These issues should be reflected in the Bill and consequently the Financial Memorandum.

### **Additional support for those who experience hate crime**

In response to the question posed by James Kelly MSP around additional measures to support victims of hate crime, we said that there should be the formation of advocacy groups to support victims of hate crime, from the reporting process through to prosecution and the aftermath. To clarify, this is separate from Third Party Reporting (TPR) scheme which we have previously argued do not work in practice - for instance, data shows that only slightly over 1% of hate crimes are reported via these centres. We also argue that as through TPR centres people do not report hate crime to the police directly, this can widen the gap between police and Black and minority ethnic (BME) communities.

For the aforementioned reasons, we have argued that the focus should not be on TPR schemes. Instead we believe there needs to be more investment in advocacy services, with appropriate funding and capacity building to support people who experience hate crime report directly to the police and follow their case through the criminal justice system.

We would be happy to speak with you further on these issues if required.

Coalition for Racial Equality and Rights

24 November 2020