

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM INCLUSION SCOTLAND

Inclusion Scotland is a 'Disabled People's Organisation' (DPO) – led by disabled people ourselves. Inclusion Scotland works to achieve positive changes to policy and practice, so that we disabled people are fully included throughout all Scottish society as equal citizens.

1. Do you think there is a need for this Bill and, if so, why?

1.1. Disabled people are more likely to be victims of crime than non-disabled people. There has been a steady increase in the number of reported hate crimes against disabled people in Scotland in recent years, The Total number of charges of an offence aggravate by prejudice related to disability in 2019-20 was 387, an increase of 29% on 2018-19¹. Despite this, it is generally accepted that hate crime against disabled people remains significantly under-reported.

1.2. It is important to send a clear message that targeting certain people because they have a particular protected characteristic is never acceptable. In its "Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland"² on the United Nations Convention on the Rights of Disabled People (UNCRPD), the United Nations Committee on Rights of Disabled People said –

"The Committee is concerned about abuse, ill-treatment, sexual violence and exploitation of women, children, intersex persons and elderly persons with disabilities, and the insufficient measures to prevent all forms of exploitation, violence and abuse against persons with disabilities. It is also concerned at reports of cases of disability hate crime, in the absence of consistent data collection and differences in legal provisions for sentencing different types of hate crime." (para 39)

It also referred to "the persistence of negative attitudes, stereotypes and prejudice against persons with disabilities" (para 22).

1.3. Although some of these negative attitudes are driven by the UK Government's welfare reforms³, which paints disabled people as scroungers, it is essential

¹ Hate Crime in Scotland 2019-20, published June 2020 by the Crown Office and Procurator Fiscal Service: <https://www.copfs.gov.uk/images/Documents/Statistics/Hate%20Crime%20in%20Scotland%202019-20/Hate%20Crime%20in%20Scotland%202019-20.pdf>

² http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5

³ See for example The Impact of Welfare Reform in Scotland – Tracking Study” (para 2.52)

<https://www.napier.ac.uk/~media/worktribe/output-179358/the-impact-of-welfare-reform-in-scotland--tracking-study-interim-report-to-the-scottish.pdf> and Inclusion Scotland's own research <https://inclusionscotland.org/welfare-reform-impacts-on-disabled-people-the-facts/>

that the Government sends a clear message that disabled people have the same rights as anyone else. Disabled people are more likely to be victims of crime than non-disabled people. This extends beyond what is normally seen as within the scope of hate crime assault, verbal abuse, harassment, etc.

- 1.4. In its Concluding Observations, the UN Committee recommended that the State Party "Define comprehensively the offence of disability hate crime, and ensure appropriate prosecutions and convictions." (para 39(b)).
- 1.5. Inclusion Scotland agrees that there should be a comprehensive definition of the offence of disability hate crime, but that this definition should cover any crime committed against a person because of their protected characteristic, whether or not motivated by hate or hostility.

2. Do you believe there is merit in the consolidation of existing hate crime laws and should all such laws be covered?

- 2.1. Inclusion Scotland believes that there should be a consistent approach to statutory aggravations applied across all protected characteristics. It would seem sensible to have a single piece of legislation to ensure a consistency of approach and interpretation across the protected characteristics covered by hate crime legislation.
- 2.2. Consolidation of hate crime legislation will also help address intersectional hate crime. Disabled women are twice as likely as non-disabled women to experience gender-based violence, including domestic abuse, sexual assault and rape. One in two disabled girls will have experienced some form of sexual violence before their 18th birthday, compared to one in five disabled boys. Disabled pregnant women can face hostile attitudes. A recent Stonewall Scotland survey on LGBT Hate Crime shows that disabled LGBT People are more likely to be victims of hate crime than non-disabled LGBT people.⁴

3. Do you think that the statutory aggravation model should be the main means for prosecuting hate crimes in Scotland?

- 3.1. Inclusion Scotland broadly supports that statutory aggravations by reason of prejudice in respect of one or more of the protected characteristics, including disability, continues to be the core method for prosecuting hate crimes in Scotland.
- 3.2. Disabled people are more likely to be victims of other crimes including domestic violence or crimes of dishonesty as a result of their protected characteristic, which the perpetrator may perceive as making them more vulnerable and thus an easier target. These crimes may not be motivated by malice or hostility, but simply because of the particular impairment. For example, doorstep fraudsters may see people with a learning disability as being more susceptible to their

⁴ http://www.stonewallscotland.org.uk/sites/default/files/lgbt_in_scotland_hate_crime_-_web_use.pdf

deception. A disabled person in an abusive relationship may be less able to defend themselves.

- 3.3. Disabled people often experience bullying and harassment throughout their lives. Many disabled people have come to accept this type of harassment as normal, and something that just happens to people like them. In effect, they come to see the harassment as their own fault and not the fault of the perpetrator. Too often disabled people do not feel that their concerns are taken seriously by police or other authorities.
- 3.4. Disabled people are more likely to have been bullied at school than non-disabled people⁵, and often disability related bullying is not recorded or addressed. When addressed, the response is too often to remove the disabled person from situations where they may be bullied rather than deal with the bullies. This can leave the disabled person feeling excluded and feeling that the fact that they are being bullied is their fault not the perpetrators.
- 3.5. Disabled people report that low-level harassment is a backdrop to their everyday lives. This can include things like name-calling, moving things out of reach, getting in the way, pranks, or making the disabled person the butt of the joke. In themselves these might not seem sufficient to be considered a "crime", but the cumulative effect can be devastating.
- 3.6. Disabled people may prefer to not go out, or avoid places like town centres, leisure facilities, or public transport, instead sticking to places they feel safe. This can lead to social isolation, which in turn can impact on the persons mental health and wellbeing. Many disabled people have come to accept this type of harassment, which they may have faced all their life, as normal, and something that just happens to people like them. In effect, they come to see the harassment as their own fault and not the fault of the perpetrator.
- 3.7. Too often the perpetrators are unaware of the consequences of their actions, thinking that it is just a bit of fun. In reality this low-level harassment limits the rights of disabled people to live independently in society, the same as anyone else, and can have serious consequences for people's long-term health and wellbeing.
- 3.8. **Inclusion Scotland is concerned that the statutory aggravation model does not necessarily capture this low-level harassment as it may not appear to meet the threshold to be considered a crime (e.g. assault or breach of the peace). Noting that the Bill does not intend to repeal s50A on racial harassment, Inclusion Scotland urges the committee to consider whether a similar stand-alone harassment clause would provide additional protection for other protected characteristics, including disability.**

⁵ "Bullying experiences among disabled children and young people in England", Lucinda Platt et al, London University, Institute of Education, 2014

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

- 4.1. There is little doubt that negative portrayals of groups with protected characteristics leads to an increase in hostility towards these groups, and an increase in hate crimes. The inaccurate and negative attacks on EU immigrants by some politicians and media outlets as part of their Brexit rhetoric reportedly led to an increase in hate crime against immigrants. Similarly, Muslims face increased hostility following terrorist attacks by extremists.
- 4.2. A current example of media outlets stirring up hatred against a group with protected characteristics might be the attacks on transgender and non-binary people by some newspapers. In a similar way, disabled people have reported increased hostility towards them in recent years as a result of stigmatisation by some politicians and media as “welfare scroungers”. There has been a steady increase in the number of reported hate crimes against disabled people in Scotland in recent years, although it is generally accepted that these are still significantly under-reported.
- 4.3. Whilst Inclusion Scotland would support the extension of provisions on stirring up hatred to cover other protected characteristics, including disability, we recognise that this is unlikely to have much impact on the extent of disability hate crime. The present legislative framework is focused on individuals who stir-up hatred but does not address the stirring up by politicians and media through their use of misleading negative portrayals, stigmatising language and displays of hostility that are designed to promote and bolster negative stereotypes. This gives a false legitimisation to those who harbour hostile attitudes that their prejudices are justified, and they are therefore free to display hostility towards these groups.
- 4.4. Cyber-bullying and other online abuse is an increasing problem. This is not just about one-on-one abuse but can be general hostility against a particular group which can reinforce existing feelings of low self-esteem felt by people who share these characteristics. "Fake news" and unfounded comments can quickly spread across social media and be taken as facts or acceptable points of view.
- 4.5. Recent surveys show that the main source of news for many young people is social media - like Facebook or Twitter - but these sources are unregulated, with no checks on accuracy of posts. Inaccurate, and abusive, posts can be reposted easily giving them more credibility. Even previously debunked stories can re-emerge again and again. The increasingly hostile on-line environment including harassment and Persecution can impact on health and wellbeing.
- 4.6. Social Media should be a safe place for all users, in the same way as any public space, but at present many people have to exclude themselves from social media platforms due to the hostility they have faced.

4.7. Inclusion Scotland is concerned that the Bill does not directly address the use of social media to stir up hatred and hostility against individuals or groups with protected characteristics, including disabled people.

Inclusion Scotland
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