

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM GLASGOW HATE CRIME WORKING GROUP

*1. General*

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

Yes, there is a need for this Bill for the following reasons.

The state should clearly and publicly condemn criminality motivated by prejudice against marginalised and discriminated against groups.

Hate crime is made visible if given the specific attention of the law, leaving individuals less vulnerable within a wider victim group.

Hate crime differs from other crime because it impacts on entire communities and undermines positive relations across diverse population groups, undermining community cohesion.

Legislating against hate crime supports public authorities to fulfil their public sector equality duty to promote good relations between those who share a protected characteristic and those who do not.

Finally, the harm to hate crime victims is frequently more profound and longer lasting than that of other victims of crime as it is an aspect of their core identity that is under attack

In addition, the following non-legislative measures would be helpful in addressing hate crime:

- The development of a national hate crime strategy and action plan that is framed around the themes of Prevention, Responding and Reporting, as suggested by Lord Bracadale's report.

This should provide direction on the priorities for Government, the responsibilities of public bodies and agencies and how they should engage with each other and the wider set of stakeholders in order focus collective resources on government priorities.

Some of the points below should be considered within the Scottish Hate Crime Strategy and Action Plans

- The Hate Crime Working Group strongly feels that investment is required in better communications to improve hate crime reporting. This includes awareness raising at a general population level; campaigns targeted at specific communities; greater clarity of language to assist people to recognise hate crime when they come across it and active promotion of third-party reporting.

Also, better communication between police and victims and witnesses would improve reporting. Better communication is one of the keys to improving hate crime reporting.

- The Hate Crime Working Group endorses the development of hate crime champions who operate at community level based on a peer support model. The communities could be geographic e.g. neighbourhood level or they could be thematic, e.g. communities who experience hate crime. The common approach is that the champions will work from within their communities to encourage reporting.
- Press reporting should be restricted if it is anticipated that there will be any repercussions or consequences for the complainers' personal safety and / or it is likely that their right to privacy will be seriously breached, for example where someone may be publicly "outed" against their will. It is our view that considerable thought should be given to process, in particular at what stage the application to protect the complainer's identity is made and who makes this assessment. Our position is that the views of services supporting victims should be paramount in this.
- Third Party Reporting is an extremely useful tool in helping encourage people to report Hate Crime and the approach of being able to report in a comfortable environment, via the third-party mechanism makes it very user friendly. One of the HCWG partners, an organisation that promotes the brand widely using posters and leaflets in public areas and on its website, showed the brand to a room of approximately 50 service users from Polish and African communities, and asked how many people recognised it. Only 1 person was aware of what it represented. So, there is a clear need to raise the profile and brand and current levels of promotion do not appear to be adequate.

We suggest that the scheme would benefit from a revamp and rebrand along with the development of clearer language (e.g. change the scheme name so that it reflects its purpose and function. One suggestion is 'support to report'). These changes should be underpinned by communication and media campaigns to support the rebrand and communicate the message.

We consider that changes to the Third-Party Reporting scheme will be more successful if groups affected by hate crime and third sector support organisations are involved in the process of developing appropriate language, rebranding and promoting the scheme.

The Hate Crime Working Group feels that the scheme is limited by lack of investment. In order to promote and deliver third party reporting effectively, investment is required.

- The Hate Crime Working Group eagerly awaits the result of the stakeholder review of Third Party Reporting undertaken in the latter stages of 2019 and hope that the recommendations that arose from the review are considered as quickly as possible by the National Action Group on Tackling Prejudice and Building Connected Communities chaired by the Cabinet Secretary for Communities.
- Restorative Justice and Diversion are useful parts of the criminal justice system and should be utilised if appropriate. The HCWG supports these options to address the attitudinal element of offending and facilitate behavioural change through improving understanding of the impact of the behaviour on victims and communities. However, RJ must always be voluntary for all parties to be effective.
- The Bill as it stands did not take on suggestions of having 'a fund for organisations independent of the criminal justice system that supported victims of hate crime and who also had the confidence of the communities.' we would recommend that the committee take the opportunity to add this to Bill.

## 2. Consolidation

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

The legislation has developed in a piecemeal fashion in line with societal developments in understating the nature of prejudice. It is our view that a single piece of legislation would provide greater clarity and consistency in dealing with bias crime

## 3. How to prosecute hate crime?

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

Glasgow Hate Crime Working Group holds a range of views on this question and the collective agreement is to support the view of BAME organisations. We prefer to retain Section 50A as this provides the option of prosecution as a stand-alone offence where corroboration is present and where there is no corroboration for the racial motivation then prosecuting a substantive charge e.g. Section 38, with a Section 96 aggravation applied.

4. *Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation? Would any alternative means be measured effective? For example, would there have been merit in introducing a statutory*

*aggravation (outwith hate crime legislation) for the exploitation of the vulnerability of the victim?*

- a) The majority of Hate Crime Working Group partners support the inclusion of age as a statutory aggravation. There is opposition to the introduction of vulnerability as an aggravation. The HCWG would point out that a distinction between vulnerability and hostility must be clearly drawn, and this is particularly relevant for age-based hate crimes. Operational guidance is required to support police and prosecutors particularly on making a distinction between vulnerability and hostility.
- b) The HCWG expressed and considered a broad range of views on the introduction of a statutory aggravation of vulnerability. This response summarises the key issues of concern.

There is clear agreement that it is important to distinguish between offences that are motivated by hostility, which are hate crimes, and offences that could be described as opportunistic, in the sense that an offender identifies a vulnerability and exploits the vulnerability in a criminal manner. Serious concerns exist that there could be operational confusion between an aggravation by prejudice and an aggravation by vulnerability. This is particularly relevant to older people and disabled people who may not self-identify as being vulnerable.

One partner, a disabled people's organisation, undertook consultation with its members who expressed clear opposition to the introduction of a statutory aggravation of exploitation by vulnerability. They cite the University of Sussex study into the under-reporting and under-prosecution of disability hate crime in England, that concluded that the criminal justice system is too quick to categorise disabled people as vulnerable. Indeed, the vulnerable designation prevents disability hate crime from being fully recognised and perpetrators appropriately punished. Their experience as a Third-Party Reporting Centre suggested that there could be operational confusion between an aggravation by prejudice and an aggravation by vulnerability, giving rise to concerns about the potential for Police Scotland staff responding to a report of an incident to make unfounded value judgements in regard to the vulnerability of the individual victim. Disabled people may not self-identify as being vulnerable at all and indeed the suggestion that someone is vulnerable because of their condition or impairment could cause offence.

The risk is that crimes targeted at a disabled person may only be recognised as being related to a perceived vulnerability - a label that the victim does not identify with - when that individual believes that the incident was motivated by hostility toward their disability. Given the long-standing issue of under-reporting disability hate crime we feel that the potential for operational confusion or for individuals to be subjectively and offensively identified as vulnerable is such and that an aggravation in regard to vulnerability should not be introduced.

Another partner's service that works with women involved in prostitution requested that further consideration be given to explore the scope for the inclusion of women who are exploited in prostitution, should be a statutory

aggravation of vulnerability be introduced. This would be in line with the national Equally Safe Strategy which recognises women involved in prostitution are there because it is survival behaviour and they are exploited because of their experiences of poverty, addictions, adverse childhood experiences including child sexual abuse, being looked after or accommodated by the local authority etc.

5. *Other forms of crime not included in the Bill*

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

Existing legislation to deal with crime motivated by racist and religious prejudice is adequate to capture behaviour that would currently be characterised as sectarian.

6. *Stirring up offences*

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

The HCWG recognises the complexity of this question and the difficulty of drafting meaningful legislation and that setting an appropriate threshold for stirring up offences will be challenging.

However, it is the groups view that behaviour which incites hatred is very real and it is an important principle that marginalised and discriminated against social groups should be protected against such behaviour. The Hate Crime Working Group's view is that it should apply to all 5 existing protected characteristics plus any new characteristics introduced in the Bill

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

No consensus was reached

8. *Other issues*

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

Glasgow Hate Crime Working Group's view is that in a democratic and diverse society, a variety of opinions co-exist and the right to express these views should be protected in line with EHRC Article 10. Protecting freedom of speech or expression is important but needs to be balanced against the damage to communities caused by that right and an appreciation that all rights come with responsibilities. There needs to be a proportionate response, though finding the gauge by which this could be measured will be difficult.

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

Glasgow Hate Crime Working Group holds a range of views on this question and the collective agreement is to support the view of BAME organisations. We prefer to retain Section 50A as this provides the option of prosecution as a stand-alone offence where corroboration is present and where there is no corroboration for the racial motivation then prosecuting a substantive charge e.g. Section 38, with a Section 96 aggravation applied.

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

The Hate Crime Working Group supports the abolition of the offence of blasphemy on the grounds that there has been no prosecution since 1843.

Glasgow Hate Crime Working Group  
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