

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM RENFREWSHIRE COUNCIL

General

Q1. 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?

There is a need for the Bill to consolidate the current laws into one consistent approach. The new bill would be an important milestone in protecting victims. By creating robust laws for the justice system this will send a strong message to victims, perpetrators, communities and to wider society that offences motivated by prejudice will be treated seriously, will not be tolerated and this may also increase confidence in victims to come forward.

Renfrewshire Council would have liked to have seen a change to the overall definition and a move away from the term 'Hate' Crime to better represent that people are being targeted, not always through hatred, but often because of a perceived vulnerability or a visible/behavioural difference.

Discussion with women's organisations have also led to the proposal that gender should be added to hate crime law with the purpose to have a standalone offence to cover misogynistic harassment. The fact that the Scottish Government is looking at the development of a standalone offence of misogynistic harassment is also welcomed.

Consolidation

Q2. 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?

Consolidating legislation will help strengthen the protection of vulnerable and marginalised groups within society and hopefully encourage better confidence in reporting incidents.

While having standalone aggravations to assist the legislation can be helpful, the term 'hate crime' can be used to describe a range of behaviour carried out by one or more perpetrators, such as verbal abuse, intimidation, threats, harassment, assault and bullying, as well as damage to property. It can also include 'mate crime', where the perpetrator can be a friend, carer or acquaintance, and befriends someone to exploit this 'friendship' for financial gain or some other criminal purpose.

Overall there is benefit in consolidation of existing laws to make clear that all crimes and behaviours of this nature are covered – rather than legislate against specific instances of crime in a way that can leave some people unprotected where others would be protected if the specific behaviour they have encountered has not been the subject of specific legislation.

How to prosecute hate crime?

Q3. 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?

The statutory aggravation model does not allow for a true representation of the number of crimes against vulnerable or marginalised groups. The aggravation model relies on the successful conviction of an offence in order to attach the hate crime aggravation. The aggravator can only be added if hatred, malice or ill will can be evidenced.

However, if the definition was changed from hate crime to prejudiced based crime, it may better reflect the number of people who are specifically targeted because of who they are, or who they are perceived to be. Many disabled people, for example, are only vulnerable when targeted because of their disability. Someone may be targeted for abuse, harassment, theft, assault etc because they are perceived as being an easy target (more vulnerable). As there has been no evidence of hatred, it can become difficult to add the aggravator. In addition, there is still a reliance on the Police Officer attending the incident to flag an aggravator on the initial report. If this is not done, it is unlikely to be added at a later stage.

Having standalone aggravations can give victims the prompt and the voice to speak out about their suffering and experiences.

Care has to be taken however to ensure that the absence of a specific aggravation does not mean that behaviours otherwise covered by the legislation cannot be prosecuted under the legislation.

Specifically looking at misogynistic behaviour - the broad reasons given in support of such a provision are a recognition that women are routinely subjected to verbal and physical harassment as a result of their gender, whether in the workplace, education settings, in public places or online. In recent months, the revelations about sexual intimidation by some men in positions of power (film producers, politicians etc.) have led to high profile campaigns to encourage women to recognise and challenge incidents of sexual harassment. The #metoo hashtag has been used by women and men on social media to highlight examples of sexual assault and harassment in an attempt to demonstrate its magnitude.

Misogyny is defined as someone who hates, is prejudiced or has contempt for women or/and girls. Sexual intimidation, abuse of power and sexual harassment are crimes in themselves and not necessarily related to misogyny. Misogyny is not always the correct

term to use even for when men in the most part abuse their positions to coerce, control, assault or harass women.

There is a concern that in using terms that define specific types of behaviour – because that is the most prevalent example, some types of hate crime will continue to be overlooked by the legislation, underrepresented or underreported. If we are to achieve equality in our legislation, it should recognise that specific hate crimes do occur to all vulnerable groups. Legislation needs to recognise that gender or prejudice or contempt for a specific gender is necessarily the most relevant factor when abuse occurs – while the focus of professionals and interest groups will rightly remain on targeting awareness and resources on addressing the worst and most prevalent examples of hate crimes – especially those perpetrated with a gender, racial or disability bias the legislation used needs to clearly represent and protect the interests of all vulnerable people.

For example, Misandry is not being flagged up in a similar way yet there are cases of men being sexually harassed or abused in similar circumstances to those subjected to misogyny in workplaces including online and while it is accepted that this is not on the scale of female harassment, it does exist as does domestic abuse towards males in relationships which has also only recently been recognised.

Misogynistic behaviour has previously been normalised and accepted. As a result, sexist bullying and sexual harassment continue to be very likely to be underreported because women who are subject to that type of harassment do not see it as significant enough to be taken seriously by the authorities.

More recently Black Lives Matter campaigns and awareness have raised and heightened awareness of similar issues in relation to racial prejudice and hate. And there is always a potential for similar types of previously normalised behaviour to be highlighted and acted on – our legislation needs to clearly represent all potential victims and circumstances of hate crime.

Q4. Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation? Would any alternative means be measured effective? For example, would there have been merit in introducing a statutory aggravation (outwith hate crime legislation) for the exploitation of the vulnerability of the victim?

Introducing a new aggravation on age hostility is a progressive measure in order to update and modernise current hate crime legislation and provide legislative protection to a potentially vulnerable group. However, the hostility measure should in turn be added to the other 5 strands of hate crime also, as the same difficulty would apply in evidencing ‘hatred’ towards a person because of their age as it would to disability?

Other forms of crime not included in the Bill

Q5. 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?

In the West of Scotland, particularly, “Stirring up of hatred” can contribute to a social atmosphere in which discrimination is accepted as normal. If passed, the legislation will offer greater protection for those who experience this kind of behaviour especially around support for football teams.

Stirring up offences

Q6. 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 new offence of stirring up hatred will provide consistency across all characteristics and is a positive move to tackling threatening and abusive behaviour. Often disabled people can be targeted through the use of abusive behaviour that can be based on fabrications, such as spreading rumours that someone with a learning disability is a paedophile.

Q7. Do you have any views on the Scottish Government’s plans to retain the threshold of ‘threatening, abusive or insulting’ behaviour in relation to the stirring up of racial hatred, contrary to Lord Bracadale’s views that ‘insulting’ should be removed?

Agree with Lord Bracadale that ‘insulting’ should be removed. This will bring the legislation in line with the other stands and promote a consistent approach across all protected groups.

Other issues

Q8. Do you have any comments on what should be covered by the ‘protection of freedom of expression’ provision in the Bill?

Not specifically, however, in 2018 the joint committee of human rights held an inquiry into the state of free speech in UK Universities. They found that while restriction of freedom of expression was not a widespread issue, there were concerns around increased bureaucracy and potential self-censorship for students on campus as a result of the PREVENT duty guidance. So far this has not been such a concern within Scotland as it has been in some communities within other parts of the UK. They also flagged a potential conflict in interpretation in some existing laws and guidance. The provision in the Bill should fully support Equalities and Human Rights.

Q9. Do you agree with the Scottish Government that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should not be repealed?

Yes – Whist Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, along with the option of using the statutory racial aggravation meant section 50A was no longer needed, it should be noted that Section 50A is well used and the other option did not offer equivalent substantives and if repealed would send out wrong messages. Enduring nature of racial prejudice meant that a specific standalone offence was merited.

Q10. What is your view on the plans for the abolition of the offence of blasphemy? (Offence has not been prosecuted in Scotland for more than 175 years and, according to the Scottish Government, no longer reflects the kind of society in which we live)

This legislation would appear to be outdated and therefore not required. The common law offences of blasphemy libel were formally abolished in England & Wales in 2008. In Scotland these laws have not been used for over 175 years. The outdated law is no longer necessary or appropriate and the law “Stirring Up Hatred” will capture the basis of religion. This would also be defined on a combination of the behaviour of the person involved, their intent and the likely outcome of the behaviour.

Renfrewshire Council
24 July 2020