

## JUSTICE COMMITTEE

### HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

#### SUBMISSION FROM FIFE CENTRE FOR EQUALITIES

**Fife Centre for Equalities** (FCE) welcomes this opportunity to contribute views to The Justice Committee in its scrutiny of the Hate Crime and Public Order (Scotland) Bill. This written submission is based on insights from FCE's work in raising awareness and reporting of Hate Crime across Public, Private and Third Sector organisations and also as an acting Third-Party Reporting Centre receiving direct feedback from individuals and community groups with protected characteristics.

#### Summary

Fife Centre for Equalities has previously contributed the key points below to the Scottish Government 'One Scotland: Hate Has No Home Here' consultation and Lord Bracadale's Independent Review. We reiterate these in this Call for Views:

- Current legislation and non-legislative measures do not do enough to encourage and support reporting of Hate Crimes.
- There is a need to harmonise the protection being offered to all protected characteristics of the Equality Act 2010 to prevent fragmentation of policy and practice.
- This is in order to avoid creating hierarchies or sense of priorities in regards to various protected characteristics, resulting in inconsistent organisational responses to Hate Crime.
- Statutory Aggravations should be extended as far as possible to all protected characteristics such as Age, Disability, Gender Reassignment, Race, Religion & Belief, Sex and Sexual Orientation.
- Similarly, those should apply to the incitement of hate across the protected characteristics listed above.
- Statutory Aggravations should also apply whether the victim is perceived to be or associated with one or several protected characteristics.
- Online or offline actions should be dealt with the same severity.

- We consider freedom of speech and the human rights of individuals to be protected by this legislation, as it does not directly limit actions that can lawfully be taken under freedom of expression.
- Finally, we suggest that the terms ‘Gender Identity and Expression’ would be more apt than ‘transgender identity’ or “variations in sex characteristics”, as used in this latest draft of the Bill. We believe that ‘Gender Identity and Expression’ to be more inclusive as it covers categories such as transgender, non-binary and any other identity or expression that individuals may choose to identify themselves as, while also being less confusing to the wider public than “variations in sex characteristics”.

### **Written submission by Fife Centre for Equalities:**

#### **General**

*1. 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 as it offers an updated framework to tackle both the persistent and more recently arising forms of Hate Crime. We believe that a sound and consistent legislation will help drive renewal or improvement in standards in other non-legislative areas of policy and practice.
- We would have liked to have seen clearer integration of Third-Party Reporting Centres with policing, Community Planning and Community Safety. This would include for example workable agreements between both statutory and community partners on the definitions, monitoring and consistent protocols for information sharing of Hate Crime data.

#### **Consolidation**

*2. 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?*

- Yes, in our view the Bill responds to the need of harmonising the protections offered by the law to people with protected characteristics and acts to prevent further fragmentation of policy and practice.

- The merit of this approach is to formally establish a fair, level and common ground for access to justice by the diverse communities in Scotland.
- Particularly, we see merit in a Bill which will purposely avoid creating environments with hierarchies or with variation in prioritisation for different protected characteristics. We know this results in inconsistent or, in worse scenarios, altogether dismissive organisational responses to Hate Crime. This impacts severely on its victims, frustrates them as well as their communities and in the longer term, reduces the likelihood of Hate Crime being reported to authorities.

### **How to prosecute hate crime?**

*3. 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?*

- We are agreement that the statutory aggravation model outlined below should be the main means for prosecuting Hate Crimes:
  - Victims are encouraged to report any crime
  - Police should ask victims whether they feel they're being targeted because of their protected characteristics
  - Prosecution should note the potential aggravation
  - Judges/Sheriffs will take aggravation in consideration when sentencing.
- Regarding aggravation for sex hostility, we suggest that this protection is offered to both men and women and would advocate that it is implemented in this Bill now rather than at a later stage.
- We understand that gender-based abuse or harassment will disproportionately affect women, however we feel strongly that everyone should be protected from hate crime regardless of their protected characteristics.

*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?*

- In our view a new statutory aggravation on age hostility should be added to Scottish hate crime legislation for consistency, as in our view, age-related hostility can be experienced regardless of a status of 'vulnerability'.
- We see however the merit in creating a statutory aggravation of 'vulnerability' separately from hate crime. We believe that many protected characteristics can be exploited because of their vulnerability, particularly children, older people, disabled, minority ethnic people, people who are trans and women.

### **Other forms of crime not included in the Bill**

*5. 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?*

- We do not wish to comment on sectarianism as we feel we still do not have sufficient knowledge on how this could be applied or defined as being different from race or religion under the new harmonised framework.

### **Stirring up offences**

*6. 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?*

- Statutory aggravations should be extended as far as possible to protect the protected characteristics such as Age, Disability, Gender Reassignment, Race, Religion & Belief, Sex and Sexual Orientation.
- We believe that this will help shift the focus of policy makers and practitioners towards recognising and addressing core unwanted behaviours (e.g. the actions linked to stirring up hatred) and avoid creating environment where the characteristics of victims could influence whether their claims are taken seriously or altogether impact on their capacity to access to justice.
- Similarly, the Bill should also provide tools for tackling online Hate Crime, in a similar vein to how the Public Order Act 1986 was a contemporary response to tackling the types of conducts then recognised to be commonly used in the stirring up of racial hatred.

*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?*

- We support the Scottish Government's plans to retain the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of racial hatred.

### **Other issues**

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

- Our view is that freedom of speech and the human rights of individuals are explicitly protected by the proposed legislation, providing the individual's actions are lawful.
- In our view, legitimate debate and criticism should be protected and distinguished from insulting, illegitimate, threatening or grossly offensive behaviour.
- The latter contributes to a social atmosphere in which prejudice and discrimination are accepted as normal and in which the freedom of expression of people with protected characteristics is also impinged.

*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?*

- In accordance with our key principles, our position is that the repeal of Section 50A Racially Aggravated Harassment would be a logical action in order to harmonise Hate Crime legislation.

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

- We support the view that the offence of blasphemy, which has not been prosecuted in Scotland for more than 175 years, should be abolished in this Bill.

### **About Fife Centre for Equalities.**

Fife Centre for Equalities (FCE), funded by Fife Council, started in 2014 with the **vision** to inspire and enable everyone we work with to take action that makes Fife a more equal, fairer place to live, work and study.

FCE's **mission** is to develop a harmonised approach to build a collective voice to champion equality, diversity, inclusion and social justice.

Our **values** are to work with honesty, integrity, respect and transparency, and strive to demonstrate a fully inclusive approach in everything we do. We want everyone we work with to share these values in the belief that they will help make Fife a fairer and more equal place.

Fife Centre for Equalities  
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