

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM THE EQUALITY NETWORK

Introduction

The Equality Network is a national lesbian, gay, bisexual, trans and intersex (LGBTI) equality organisation in Scotland existing since 1997. The Scottish Trans Alliance, based within the Equality Network since 2007, focusses specifically on trans equality. This submission is on behalf of both the Equality Network and Scottish Trans Alliance.

Equality Network relies on community engagement, our own research and research published by others with specific expertise in a variety of subjects to inform our policy positions on a wide range of topics that impact LGBTI people in Scotland. Throughout this evidence we have tried to answer the questions posed by the committee in its call for evidence in those areas where we have expertise. On issues outside our areas of expertise, we defer to the expertise of organisations whose work focuses on those sectors.

Hate crime is part of the wider societal issue of marginalisation and it is good to see that in its call for evidence, the Scottish Government recognises that tackling this problem needs to include both legislative and non-legislative solutions. Behaviour that rises to the level of criminality represents only a small part of the broader social challenge of connection and inclusion. Equality Network strongly encourages the Scottish Government to continue to invest in existing work to improve community awareness and reporting of hate crime. We also commend the Scottish Government's work on building broader connected communities following on from the recommendations found in the *Report of Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion* chaired by Professor Duncan Morrow published in 2016¹.

¹ <https://www.gov.scot/publications/report-independent-advisory-group-hate-crime-prejudice-community-cohesion/pages/5/>

In our *2017 Scottish LGBTI Hate Crime Report*², we detailed a number of recommendations for interventions beyond criminalisation to improve the experiences of LGBTI people in Scotland relative to hate crime. Our recommendations from that report are attached to this evidence at Appendix 1.

We welcome the Bill and note that the current legislation is the product of lengthy consultation, first by Lord Bracadale examining the efficacy of Scotland's existing hate crime legislation and then by the Scottish Government as to the shape this proposed legislation should take.

It is the responsibility of the Scottish Government to protect and promote inclusion for all members of society. Historically marginalised groups lack the numbers, and the social capital and power necessary to be exclusively their own advocates. It is therefore legitimate and necessary for the Scottish Government to enshrine in law that certain behaviours, motivated by hate, are unacceptable in a modern Scotland and will thus be subject to criminal sanction.

In spite of significant social and legal progress over the past decade, negative social attitudes towards minority groups continue to exist. According to the 2015 Scottish Social Attitudes (SSA) survey³, 16% of the Scottish population would be unhappy or very unhappy if a close relative married or entered into a long-term relationship with a person of the same sex. This number rises to 32% if the person is trans and has undergone gender reassignment surgery, and yet further to 39% if the person cross dresses in public. 18% of the Scottish population still believe that same sex relationships are wrong, and 10% believe that efforts to give equal opportunities to lesbians and gay men have gone too far. 13% believe that gay men and lesbians are unsuitable to be teachers and 20% say this about trans people⁴. In the 2016 British Social Attitudes Survey 6% said that it was rarely or never wrong to have prejudice against trans people⁵.

² The report can be accessed at https://www.equality-network.org/wp-content/uploads/2017/10/en_hc17-full_final1alores.pdf

³ The questions related to attitudes towards LGBTI people are not asked by the SSA every year. 2015 is the most recent year for which data is available.

⁴ The SSA data can be accessed at <https://www.gov.scot/publications/scottish-social-attitudes-2015-attitudes-discrimination-positive-action/pages/4/>

⁵ https://www.bsa.natcen.ac.uk/media/39358/5_bsa36_relationships_and_gender_identity.pdf

The important role that the Scottish Government must play in protecting people from prejudice and hate crime can be illustrated by comparing these social attitude statistics to the size of the LGB and trans populations in Scotland. Scotland has never gathered census data about sexual orientation or trans status, so these populations can only be estimated. In 2018 the Scottish Public Health Observatory, using data from the UK Office of National Statistics (ONS) stated that 2.6% of the Scottish population self-identified as lesbian, gay or bisexual (LGB), and that other statistical measures placed the LGB population anywhere from 0.3% to 10%⁶. The most statistically reliable estimate of the trans population has been done by the Williams Institute at the University of California at Los Angeles School of Law which estimates that trans adults comprise 0.6% of the population⁷. Although the Scottish population may vary somewhat from this US based data, it is reasonable to estimate that trans people make up significantly less than 1% of the population of Scotland. The key takeaway from this comparison is that the number of people in Scotland who still hold prejudicial views about LGB and trans people outnumber LGB and trans people by a wide margin.

The most recent statistics released by COPFS show that since the Offences (Aggravation by Prejudice)(Scotland) Act 2009 came into force, charges of offences aggravated by prejudice related to sexual orientation have risen steadily from 452 in 2010-11 to 1486 in 2019-20. The most recent year saw an increase of 24.46% in the number of charges⁸. Charges for offences aggravated by prejudice related to transgender identity have risen from 14 to a peak of 52 in 2017-18 and have been above 40 for the past 4 years. As concerning as these numbers are, our research shows that they represent only a small fraction of the hate crime experienced by LGBTI people in Scotland.

Key findings from our *2017 Scottish LGBTI Hate Crime Report* show that 65% of lesbian respondents had been a target of a hate crime at some point in their lives. 66% of gay male respondents, 53% of bisexual respondents and 80% of trans respondents had also been a target of a hate crime in their lives. 90% of respondents who had been a target of hate crime experienced it two or more times, and nearly a third (30%)

⁶ <https://www.scotpho.org.uk/population-groups/lesbian-gay-and-bisexual-lgb-people/data/number-in-scotland/>

⁷ This report can be viewed at <http://williamsinstitute.seemysite.us/wp-content/uploads/TransAgeReport.pdf>

⁸ <https://www.copfs.gov.uk/images/Documents/Statistics/Hate%20Crime%20in%20Scotland%202019-20/Hate%20Crime%20in%20Scotland%202019-20.pdf>

experienced hate crime more than ten times. 71% of our respondents never reported their experiences to the police.

Taken together all of this information shows that hate crime remains a significant problem for LGBTI people in Scotland, and the fact that the vast majority of it goes unreported supports the need for the current laws to be reformed and modernised. We believe that the proposed legislation is necessary to facilitate this modernisation.

Part 1 Consolidation

Part 1 of the bill effectively replicates the current statutory aggravation provisions that deal with prejudice against LGBTI people, as well as on grounds of race, religion, and disability, and it newly adds age. However, the bill updates the language used for the existing trans and intersex protections, which we welcome. Inasmuch as the consolidation in the bill does not reduce or remove protections from those who were previously covered under the Offences (Aggravation by Prejudice) (Scotland) Act 2009 or other legislation, we support this consolidation. We do note, however, that it must be recognised that different groups experience prejudice differently. Because of this, we call upon the Scottish Government to continue its commitment to tackling prejudice and building connected communities in a manner that is responsive to the diverse needs of all of the people of Scotland.

With regard to the updated language related to transgender identity, we welcome that the Scottish Government has agreed with Lord Bracadale that the language of the 2009 Act had become out of date and needed revision. Evolving the language of legislation to keep up with changes in how the affected communities describe themselves serves an important function beyond providing clarity for those who are responsible for enforcing the law. The Scottish Government has stated in Paragraph 8 of the Policy Memorandum relating to the Hate Crime and Public Order (Scotland) Bill that introduction of this Bill will send a strong message of an inclusive and equal society. While it is impossible for legislation to match exactly all the terms that trans people use to describe themselves, it remains important to bring legislation in line with modern understandings of language. Failure to do so would undermine the confidence of the community that the justice sector had the ability to understand their experiences.

In particular, the four legs of the transgender identity definition in section 14(7) of the bill match in scope the current definition of transgender identity in the 2009 Act, but

using more up-to-date language. The Equality Network and the Scottish Trans Alliance (STA) use the term transgender, and its shortened form 'trans' interchangeably, as an umbrella term for people who find their gender identity or gender expression differs from the gender they were assigned at birth. This includes non-binary people, trans women, trans men and cross-dressing people.

We agree that the terms 'transvestism' and 'transsexualism' used within the the Offences (Aggravation by Prejudice) (Scotland) Act 2009 are increasingly outdated and considered offensive by many trans people. We welcome the improved language used within the Hate Crime and Public Order (Scotland) Bill. Although our preference would have been for the more commonly used terms 'trans man' and 'trans woman' in place of the terms 'female-to-male transgender person' and 'male-to-female transgender person', we are comfortable with the language adopted by the Hate Crime and Public Order (Scotland) Bill and consider it a substantial improvement on previous legislation terminology.

We strongly support that the Bill follows Lord Bracadale's acknowledgment and recommendation that intersex is not a sub-category of trans/transgender and welcome that a separate category has been created within this legislation that encompasses those who have a variation in biological sex characteristics.

We support the Scottish Government's proposed use of terminology in relation to I/VSC, namely the use of the term Variations of Sex Characteristic and Intersex. This is an inclusive and helpful use of terminology within legislation. We do not support the use of the term DSD or Disorders of Sex Development. We have collaborated with stakeholders in order to co-author an additional contextualisation document. Please see Appendix 2: *Contextualisation of the Inclusion of I/VSC within Scottish Hate Crime legislation*. (Supplementary Evidence).

We strongly agree with the need for the inclusion of I/VSC as a distinct category within Hate Crime Legislation in Scotland. We will further outline why this is so in our co-authored appendix (Appendix 2).

We support the continuing of the aggravation model rather than a change to a single offence model. The single offence model requires that both the underlying act and the malice behind it be proven in order to obtain a conviction. Because of this, failure to prove the malice could lead to someone being found not guilty of a clearly provable

underlying offence such as assault or property damage. In cases where it may be a bit harder to prove the malice, prosecutors would have an incentive to not charge the person with a hate crime in order to ensure a conviction for the underlying offence. This could lead to under-prosecution of the crimes.

The aggravation model removes the incentive not to prosecute by separating the burden of proof of the two elements. Where the evidence is not as strong for the malice, the prosecutor could still seek the aggravation without jeopardising the conviction for the underlying offence.

It can also be harmful to the victims if a perpetrator fails to be convicted of anything because the evidence of malice was not strong enough for a conviction. People will be discouraged from reporting hate crimes if they don't feel that the perpetrators will face any consequences. For these reasons the aggravation model is the better model for effective tackling of hate crime.

It is important also to note that what matters with the statutory aggravation is not the identity of the victim, but the behaviour and motivation of the attacker. Non-LGBTI people are less likely to be victims of hate crime motivated by prejudice against LGBTI people, but of course, they could be, for example through being presumed to be LGBTI, or being associated with LGBTI people. They are equally protected by the statutory aggravation.

Part 2 Introduction of new stirring up offences

We welcome that Part 2 of the bill extends the stirring up hatred offences to cover all the hate crime protected characteristics. We note that the extension is narrower in scope than the existing offence of stirring up racial hatred (in Part 3 of the Public Order Act 1986), which the bill mostly consolidates. The existing racial hatred offence includes threatening, abusive or insulting behaviour or communication that is intended to or likely to stir up racial hatred, and the bill continues that. However, the extension to the other protected characteristics includes only threatening or abusive behaviour or communication that is intended to or likely to stir up hatred.

We note that the "threatening or abusive" part of this matches the existing offence of threatening or abusive behaviour that is likely to cause fear or alarm (section 38 of the Criminal Justice and Licensing (Scotland) Act 2010) and we think that it is an appropriate threshold to use.

We agree with those who say that it is important that these offences do not impinge on legitimate free speech. We note that the existing stirring up racial hatred offence has not done that and neither have, in England and Wales, the offences there of stirring up hatred on grounds of religion or sexual orientation.

The right to freedom of expression is upheld by the European Convention on Human Rights, and this bill, like all Acts of the Scottish Parliament, will require to be interpreted by the police, COPFS and courts in a way that is compliant with the ECHR rights.

The right to freedom of expression is not absolute. In its guidance and legal framework for freedom of expression, the Equality and Human Rights Commission states,

‘Like the right to freedom of expression, the right of each person to be protected from discrimination and violence are fundamental human rights. In particular, Article 20(2) of the International Covenant on Civil and Political Rights requires that ‘any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law’. Thus the right to freedom of expression does not protect expression which seeks to incite violence, hatred or discrimination against others.’⁹

It is clear from this that freedom of expression does not delegitimise the stirring up offences. We believe that the thresholds established in sections 3(2) and 5(2) of the bill sufficiently meet the balance laid out in the EHRC guidance, and that the history of the longstanding similar offences relating to race, and in England and Wales, religion and sexual orientation demonstrate that these new offences will not stifle free speech.

Because the thresholds in sections 3(2) and 5(2) are clear and appropriate, we are unconvinced as to the necessity of section 12. We agree that the behaviours described in section 12 would not meet the thresholds and should not be prosecuted as a hate crime, but this is clear from sections 3(2) and 5(2) without further clarification. Should section 12 remain in the bill, we are concerned that the language of section 12(2)(b) might unintentionally undermine efforts to end so-called ‘conversion therapy’ for sexual orientation or gender identity.

Other issues

We join with other organisations such as BEMIS Scotland to call for a legal requirement to be integrated into the Bill that places a duty on the Scottish

⁹ The full guidance can be found at: https://www.equalityhumanrights.com/sites/default/files/20150318_foe_legal_framework_guidance_revised_final.pdf

Government, Police Scotland, and any other relevant duty bearers to develop a bespoke system of hate crime data collation and disaggregation across all characteristics covered by the Hate Crime and Public Order (Scotland) Bill. This data should be published on at least an annual basis and be broken down to reflect all of the ethnicity options inherent in the Scottish census alongside each of the other groups represented in the Bill. Were we to integrate this requirement into the Bill, Scotland would become an example of international best practice in using data to take a joined up approach to tackling hate crime that involves and informs both legislative and non-legislative interventions. An integration of data collation and disaggregation as a legal requirement would ensure that Scotland's institutions were operating in compliance with the International Convention on the Elimination of All forms of Racial Discrimination and provide society with a much clearer picture of the nature and prevalence of the different types of hate crime that exist across Scotland.

Equality Network

24 July 2020

Appendix 1 –Recommendations from 2017 Scottish LGBTI Hate Crime Report¹⁰**Better responses to hate crime**

- Continued LGBTI-specific training is needed for front line police officers and decision makers (we welcome that we had the opportunity in 2016 to train a national network of 91 LGBTI Police Liaison Officers, and we are continuing to work with Police Scotland to roll this training out).
- Continued LGBTI-specific training is needed for Procurator Fiscal (PF) office staff, including Victim Information and Advice (VIA) service staff.
- Communication between victims of crime and the PF / VIA service needs further improvement, and better progress updates should be provided to victims.
- Clarification is needed of the role of the PF, which at present often does not match the expectations of victims of crime, who feel that, unlike the accused, they have no “champion” in the process.
- Continued LGBTI-specific learning is recommended for sheriffs and judges via the Judicial Institute for Scotland, to ensure the most appropriate treatment of complainers in court. Sheriffs should be willing to intervene when complainers are treated inappropriately by the defence.
- Transparency is needed in sentencing, including clarification of the prejudice aggravation element. It is important that complainers can understand the basis of sentencing. Restorative justice measures should be explored.
- More information should be available to victims of hate crime about vulnerable witness measures, and potential reporting restrictions to avoid complainers being outed in court. Prosecutors should request such measures, and courts should be willing to grant them. This is particularly important for trans complainers.
- Employers should be encouraged to take action against harassment in the workplace, including recognising when this is criminal and should be reported to the police.

¹⁰ These recommendations from our 2017 Scottish LGBTI Hate Crime Report are included as supplemental evidence in response to the committee’s request in the call for views for suggestions of other, non-legislative approaches to dealing with hate crime.

Raising awareness and encouraging reporting

- Police, LGBTI organisations and community groups should continue to encourage people to report hate incidents to the police.
- Police Scotland should continue to engage with the LGBTI community around the country, to encourage and support the reporting of hate incidents. Particular attention needs to be given to ensuring that trans people can have confidence in reporting hate incidents.
- Information campaigns should promote understanding of what a hate incident is, how to report it, why it is important to report it, and what happens after you report it.
- More should be done to encourage those who witness hate incidents against others to report them.
- The operation of the third party reporting centres should be reviewed (very few LGBTI victims of hate crime use these at present).

Reliable information on hate crime

- Police Scotland IT systems need to be urgently updated to allow divisional hate incident and hate crime statistics to be made available. These should be published regularly.
- The Scottish Court and Tribunal Service should publish statistics on outcomes and sentences for hate crime prosecutions.
- All statistics published should indicate what percentage of the hate incidents dealt with were motivated by more than one type of prejudice.
- Research is needed into the details of hate crimes prosecuted with aggravations (disability, sexual orientation, transgender identity and intersex¹¹) under the Offences (Aggravation by Prejudice)(Scotland) Act 2009 (similar to research already done on racist and religious hate crime).

¹¹ As detailed in Appendix 2, we support the Scottish Government's proposed use of the term Variations of Sex Characteristic and Intersex.

Prevention

- Leadership against prejudice from both the Scottish Government and local government continues to be vital – the Scottish Social Attitudes Survey shows a big fall in prejudice towards lesbian and gay people, but prejudice remains significantly higher towards trans people.
- There should be more exploration of the potential for the use of restorative justice, both by the courts, and as a potential diversion from prosecution. The effectiveness of restorative justice on reducing repeat offending should be investigated and developed.
- The role of the education system is critical – efforts to eliminate hate crime against LGBTI people require similar efforts against bullying of LGBTI pupils in schools, and the creation of truly LGBTI inclusive education.

The law and policy

- In hate crime legislation, intersex should be recognised as a separate characteristic, rather than a subcategory of ‘transgender identity’.
- Hate crime policy should recognise that a proportion of hate crimes are aggravated by more than one type of prejudice.
- A public conversation would be useful around the terminology used for hate incidents and crime, and the boundaries between free speech, lawful but offensive speech, and unlawful and criminal abuse.
- The Scottish Government should review the prevalence and nature of online abuse and identify any measures needed to tackle it, as recommended by the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion. This review should include whether there needs to be better self-regulation by social media providers and whether current police responses to online hate are sufficient.
- The Equality Network also endorses the Independent Advisory Group’s recommendation for the Scottish Government to consider how better to protect those experiencing hate crime on public transport.

Appendix 2

Contextualisation of the inclusion of I/VSC as a Distinct Category within Scottish Hate Crime legislation - Hate Crime and Public Order (Scotland) Bill (2020) - Stage One Written Evidence

Co-authored by Dr Rebecca Crowther (Equality Network)¹²,
Magda Rakita (iCon UK)¹³,
Kaz Williams¹⁴,
Paul Dutton (Klinefelters Syndrome Association UK)¹⁵ and, Professor
Peter Hegarty (The University of Surrey)¹⁶.

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- 3) Stakeholders on their experiences of hate crime due to having an I/VSC

¹² Rebecca is the Policy Coordinator at Equality Network.

¹³ Magda Rakita is co-founder of iCon UK (InterConnected UK) an I/VSC advocacy charity. Magda also works in I/VSC support in Europe and is a noted intersex activist in both the UK and Poland. Magda has lived experience of I/VSC.

¹⁴ Kaz Williams is an adult support group co-ordinator with The Adult CAH Support Group (Living with CAH). The CAH Support Group is run by people who live with CAH. They provide support to people living with CAH as well as raise awareness of this VSC. Kaz has lived experience of I/VSC. Her views are her own and of those she works with.

¹⁵ Paul Dutton works with Klinefelters Syndrome Association UK. The Klinefelter’s Syndrome Association (KSA) offers support and information to all affected by, or having an interest in, Klinefelter’s Syndrome (KS) and XXY. Paul has lived experience of I/VSC.

¹⁶ Peter Hegarty is Professor of Psychology at the University of Surrey where he leads the research group on Social Emotion and Equality in Relations (www.surrey.ac.uk/seer).

IV) Regarding the inclusion of I/VSC as a distinct category within Hate Crime Legislation in Scotland

- 1) Visibility and empowerment
- 2) Stakeholders on why I/VSC should be included as a distinct category within hate crime legislation

V) Regarding the separation and distinct inclusion of I/VSC as a characteristic within Hate Crime Legislation in Scotland.

I) Introduction: The importance of considering the lived experience of individuals with a variation in biological sex characteristics

It is important to note the socio-cultural context in which the proposed hate crime legislation would sit when considering people who live in Scotland with an I/VSC and how hate crime may influence their social life and interactions with others.

It is imperative to listen to the voices of those who live within Scotland and have a variation in sex characteristics or who are intersex.

‘Currently, Scotland, and the UK in general, is not a very intersex friendly place. We need to have our own voice.’

- Equality Network I/VSC survey respondent (2020)

We believe that there is an essential need for engagement between people with a variation in sex characteristics, or who are intersex, and government policy makers, equality organisations, service providers, and researchers to improve policies and practices affecting the lives of people with I/VSC.

We acknowledge the policy work and academic research that is being done in this area in the UK. It is worth noting that there are scholars working in partnership with people with a variation in sex characteristics to ensure that their voices are represented within any research about the lives of people with variations of sex characteristics or who are intersex. We would highlight here the work of Surya Monro at Huddersfield University, Charlotte Jones at The University of Exeter, Peter Hegarty of The University of Surrey (co-author to this evidence), and Lih-Mei Lao from University College London Hospitals. These academics understand that the voices of those who have lived experience of I/VSC are essential. Similarly, the Equality Network (as a strategic intermediary to the Scottish Government) works closely with people I/VSC and facilitates and supports these people to engage with policy that affects them. Our further co-authors, Magda Rakita, Kaz Williams and Paul Dutton are individuals who have an I/VSC and who advocate for and support others with a VSC.

We welcome Lord Bracadale’s review and acknowledgment that intersex is not a subcategory of trans/transgender and welcome his recommendation that a separate category should be created within Scotland’s hate crime legislation that encompasses those who have a variation in biological sex characteristics. As research evidence has

shown, there is a risk that the general public may confuse I/VSC (variation in physical biological sex characteristics) and trans status (relating to ones gender identity as different to that which was assigned at birth). Making a clear distinction within hate crime legislation is important. We will expand on this study below.

II) Regarding language and terminology used within the bill:

- It is widely agreed that I/VSC is the most inclusive and helpful terminology across the stakeholders and individuals with whom we work and/or have consulted.

1) Research and international best practice in relation to terminology.

- Surveys in several countries have shown that most people who are, or could be identified as having a 'DSD' diagnosis prefer diagnosis specific terms (e.g., Congenital Adrenal Hyperplasia or Androgen Insensitivity Syndrome) over the term 'DSD'.¹⁷
- This inclusive and non-pathologising terminology is often used by variation specific support groups with whom we work in partnership.
- It is widely agreed that the acronym DSD and the term 'Disorders of Sex Development' is pathologising. This is clearly evidenced as not only expert opinion and agreed by many with an I/VSC but as an opinion held by the wider general public.¹⁸
- The term DSD as an umbrella term was used within the Chicago Census Statement (a new medical consensus) in 2006 in favour of intersex. 'DSD' was then rapidly adopted by healthcare professionals and biomedical researchers following this consensus statement.¹⁹ However, 'a ten year update to the Chicago

¹⁷ For example SEE: Bennecke, E., Köhler, B., Röhle, R., Thyen, U., Gehrman, K. & Wiesemann, C. (2020). Disorders or differences of sex development? Views of affected individuals on DSD terminology. *Journal of Sex Research*. DOI: 10.1080/00224499.2019.1703130; Davis, G. (2014). The power in a name: Diagnostic terminology and diverse experiences. *Psychology & Sexuality*, 5, 15–27; Lundberg, T., Hegarty, P., & Roen, K. (2018). Making sense of 'intersex' and 'DSD': How laypeople with varying experience of intersex/DSD understand and use terminology. *Psychology & Sexuality*, 9, 161-173.; Simmonds, M. (2012). Girls/women in inverted commas – facing 'reality' as an XY-female. Unpublished PhD thesis: University of Sussex, UK; See also Delimata, N., Simmonds, M., O'Brien, M., Davis, G., Auchus, R., & Lin-Su, K. (2018). Evaluating the term 'Disorders of Sex Development': A multidisciplinary debate. *Social Medicine*, 12, 98-107.

¹⁸ Peter Hegarty, Lois Donnelly, Paul Francis Dutton, Sara Gillingham, Valentino Vecchietti, Kaz Williams (2020 – unpublished – in press) Understanding of Intersex: The Meanings of Umbrella Terms and Opinions about Medical and Social Responses among Lay People in the USA and UK. *Psychology of Sexual Orientation and Gender Diversity*: 08.

¹⁹ Pasterski, V., Prentice, P., & Hughes, I. A. (2010). Consequences of the Chicago consensus on disorders of sex development (DSD): *Current practices in Europe*. *Archives of Childhood Diseases*, 95, 618-623.

Consensus Statements shows considerable disagreement among experts as to the appropriateness of the term, and the meanings that it communicates. A persistent concern in these discussions is that the use of an acronym including the term 'disorder' can enhance the form of stigma that medical intervention is supposed to alleviate.²⁰

- 62% of participants sampled by Davis (2015) disliked 'DSD'.²¹
- Within the national survey of Australians born with an I/VSC the term 'Intersex' was preferred by 60% and 'DSD' by only 3% of participants
- A study surveying attitudes towards terminology among support group members in the USA stated that only 24% used 'DSD' to describe their child or themselves.²² 'These participants preferred 'Intersex', 'differences' or 'variations' of sex development over 'DSD'.²³
- 'In a report from the UK, none of the participating advocacy or support groups surveyed supported the term 'DSD' and most participants used 'Intersex'.²⁴

Additionally,

- 'Social scientists²⁵ have repeatedly pointed out how language use in medical contexts implies the pathology of intersex variations, and creates

²⁰ Delimata, Simmonds, O'Brien, Davis, Auchus, & Lin-Su, 2018 – *ibid*:07

²¹ Davis, G. (2015). *Contesting Intersex: The Dubious Diagnosis*. New York, NY: New York University Press.

²² Johnson, E. K., Rosoklija, I., Finlayson, C., Chen, D., Yerkes, E. B., Madonna, M. B., Cheng, E. Y. (2017). Attitudes towards "disorders of sex development" nomenclature among affected individuals. *Journal of Pediatric Urology*, Advance online access. doi:10.1016/j.jpuro.2017.03.035

²³ Tove Lundberg, Peter Hegarty & Katrina Roen (2018) Making sense of 'Intersex' and 'DSD': how laypeople understand and use terminology, *Psychology & Sexuality*, 9:2, 161-173, DOI: 10.1080/19419899.2018.1453862: 163

²⁴ Monro, S., Crocetti, D., Yeadon-Lee, T., Garland, F., & Travis, M. (2017). Intersex, variations of sex characteristics, and DSD: The need for change. Retrieved from <http://eprints.hud.ac.uk/id/eprint/33535/> in Tove Lindberg et al (2018)

²⁵ SEE: 'Gough, Weyman, Alderson, Butler, & Stoner, (2006). 'They did not have a word': The parental quest to locate a 'true sex' for their intersex children. *Psychology & Health*, 23, 493507.; Karkazis, (2008). *Fixing Sex: Intersex, Medical Authority, and Lived Experience*. Durham, NC: Duke University Press.; Kessler, (1990). The medical construction of gender: Case management of intersexed infants. *Signs: Journal of Women in Culture and Society*, 16, 3-26.; Liao, L.-M., Hegarty, P., Creighton, S., Lundberg, T., & Roen, K. (2019). Clitoral surgery on minors: An interview study with clinical experts of differences of sex development. *BJM Open*, 9, e025821. doi:10.1136/bmjopen-2018025821; Roen, K., & Hegarty, P. (2018). Shaping parents, shaping penises: How medical teams frame parents' decisions in response to hypospadias. *British Journal of Health Psychology*, 23, 967-981.; Roen, K., Liao, L.-M., Hegarty, P., Lundberg, T., & Creighton, S. (2019). Clitoral surgery on minors: Interview study with clinical experts of differences of sex development. *BJM Open*, 9, e025821. doi:10.1136/bmjopen-2018-025821; see Roen, 2019 for a recent review' - Roen, K. (2019). Intersex or diverse sex development: Critical review of psychosocial health care

a conceptual framework within which medical interventions appear urgently necessary and singularly benevolent. A consequence of this framing is that other understandings of intersex variations are made less available.²⁶

- There are empirical studies that include UK health professionals working within 'DSD' teams in the NHS that focus on practitioners' discourses with regards to interventions related to I/VSC.²⁷
- 'Social scientists and humanities scholars have pointed out that medical terminology has negative unintended effects in communicating larger contestable pathologising frameworks'.²⁸
- In a recent large study of the United Kingdom's LGBT population, 1,980 people, or 2% of the sample, identified as 'intersex' (Government Equalities Office, 2018).
- Klinefelters Syndrome Association UK (KSA UK) have stated to the British Society for Endocrinology and others recently, that they regard the term 'DSD' as stigmatising language that members would not wish to be associated with. Paul Dutton of KSA UK states:

The fact that many doctors use the term DSD in our presence does not mean that it is acceptable to us and we would wish Medical Schools to encourage the use of our preferred terminology when their students are actually with patients.

Whilst the vast majority of us would describe ourselves as 'having KS' or 'being xxy' in preference to anything else, there are some who are accepting of 'Intersex or Variations of Sex Characteristics' and the expression i/VSC is helpful here.

research and indications for practice. *Journal of Sex Research*. DOI: 10.1080/00224499.2019.1578331.

²⁶ Roen, K. (2019). Intersex or diverse sex development: Critical review of psychosocial health care research and indications for practice. *Journal of Sex Research*. DOI: 10.1080/00224499.2019.1578331.

²⁷ Studies are about (1) the clitoris: Liao, L.-M., Hegarty, P., Creighton, S., Lundberg, T., & Roen, K. (2019). Clitoral surgery on minors: An interview study with clinical experts of differences of sex development. *BJM Open*, 9, e025821. doi:10.1136/bmjopen-2018-025821; (2) the vagina; Roen, K., Creighton, S.M., & Hegarty, P., & Liao, L.-M. (2018). Vaginal construction and treatment providers' experiences: A qualitative analysis. *Journal of Pediatric & Adolescent Gynecology*, 31, 247-251, and (3) the penis; Roen, K., & Hegarty, P. (2018). Shaping parents, shaping penises: How medical teams frame parents' decisions in response to hypospadias. *British Journal of Health Psychology*, 23, 967-981.

²⁸ Davis, 2015; Holmes, 2011; Topp, 2013 in Tove Lundberg, Peter Hegarty & Katrina Roen (2018) Making sense of 'Intersex' and 'DSD': how laypeople understand and use terminology, *Psychology & Sexuality*, 9:2, 161-173, DOI: 10.1080/19419899.2018.1453862: 161
SEE also: Roen, K. (2019). Intersex or diverse sex development: critical review of psychosocial health care research and indications for practice. *Journal of Sex Research*, 56, 511-528.

- The term intersex is used within international human rights legislation and is recognised terminology around the world.

The term intersex is used by/within:

- The United Nation's Special Rapporteur on Torture²⁹
- The Council of Europe (2015) *Issue Paper on Human rights and intersex people*³⁰
- The European Union Agency for Fundamental Rights (2015) *The Fundamental Rights Situation of Intersex people*³¹
- UN General Assembly – uses 'intersex' when discussing the intersection of race and gender discrimination in sport³²
- Joint statement on the International Classification of Diseases 11³³
- European Parliament resolution of 14 February 2019 on the rights of intersex people³⁴

2) Equality Network I/VSC Survey Results concerning terminology

Between November 2019 and July 2020 the Equality Network gathered 28 responses to a survey they released asking people with an I/VSC to share their experiences of living in Scotland. This survey is still currently open.³⁵

Survey respondents to the Equality Network I/VSC survey (n³⁶28) stated that their specific variations included: MRKH, MRKH type 2, Turner Syndrome, Congenital Adrenal Hyperplasia (CAH), Non-classical CAH, Complete Androgen Insensitivity Syndrome (CAIS), Klinefelters (KS) and 47XXY KS.

There are findings within the initial survey analysis of the Equality Network I/VSC Survey, done for the purpose of providing evidence to the Hate Crime Bill Stage One

²⁹ UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment.

³⁰ Council of Europe; Commissioner for Human Rights (April 2015), Human rights and intersex people, Issue Paper

³¹ The European Union Agency for Fundamental Rights (2015) The fundamental Rights Situation of Intersex people. Available at <https://fra.europa.eu/sites/default/files/fra-2015-focus-04-intersex.pdf> Accessed on 15th July 2020.

³² Report of the United Nations High Commissioner for Human Rights* - Human Rights Council Fortyfourth session 15 June–3 July 2020 Agenda items 2 and 3
<file:///C:/Users/rebecca/Downloads/intersex%20discrimination%20in%20sports.pdf>

³³ A statement signed by over 60 I/VSC organisations and activists
<https://ihra.org.au/35299/jointstatement-icd-11/> Morgan Carpenter on 23 May 2019

³⁴ European Parliament (2019) https://www.europarl.europa.eu/doceo/document/TA-8-20190128_EN.pdf

³⁵ Respondents were between the ages of 18 and 74 years. They resided in various location across rural, suburban and urban Scotland. 67% of respondents identified as heterosexual, 7% as bisexual, 7% as lesbian and 20% identified as 'other' when asked about their sexual orientation. Survey available at: <https://www.surveymonkey.co.uk/r/IVSC>

³⁶ Where 'n' refers to the number of people who answered the question.

evidence gathering exercise, that are important to highlight here. One area of enquiry was in to the terminology preferred by respondents who had an I/VSC³⁷.

Concerning terminology, 87% (n22) of survey respondents to the Equality Network I/VSC survey were familiar with the term 'intersex' with only 4.5% stating that this survey was the first occasion when they had heard the term in reference to themselves.

- 55% (n22) of survey respondents to the equality Network I/VSC survey used the term intersex in reference to their own body as opposed to any other term.
- It is worth noting that from this group (n22) 64% of people did not consider themselves to be an 'intersex activist.'
- We note from our stakeholder engagement that many prefer that people use specific diagnostic terms or the umbrella term VSC.
- One respondent to the Equality Network I/VSC survey stated:

'The term DSD is traumatic and degrading for me, please refrain from EVER using this.'

In addition, another stated:

'I love the term intersex, I consider any other term to describe my body as offensive, hurtful and traumatic.'

- It is worth noting that, 'different framings of stigma appear to be encoded in different 'umbrella terms,' none of which seems to perfectly meet the needs of all affected individuals, families and communities.'³⁸

3) Stakeholders on language used within the bill

We asked stakeholders, with whom we work, who have a Variation of Sex Characteristics, or who were intersex, to comment on three areas of the proposed Bill. They were: Language and what they would hope for in terms of terminology usage within legislation; Whether they had lived experience of a hate crime/discrimination

³⁷ Within the poster and social media posts that called for participation in this survey the terms VSC, Variation in Sex Characteristics, Intersex and Differences of Sex Development were used. In previous flyers produced by the Equality Network, specific variations have been listed.

³⁸ Peter Hegarty, Lois Donnelly, Paul Francis Dutton, Sara Gillingham, Valentino Vecchiotti, Kaz Williams (2020 – unpublished – in press) Understanding of Intersex: The Meanings of Umbrella Terms and Opinions about Medical and Social Responses among Lay People in the USA and UK. Psychology of Sexual Orientation and Gender Diversity:06

and prejudice based on being intersex or having a VSC³⁹, and to comment on why they felt it was necessary that I/VSC be an included characteristic within Hate Crime Legislation. The later two will be detailed throughout.

In relation to terminology, they told us that:

- In relation to language and terminology used, all stakeholders that we consulted with prior to this submission were comfortable with the term VSC or Variation in Sex Characteristics.
- All but one stakeholder used the term intersex in reference to themselves and were happy with the term.
- Some also liked the phrasing ‘intersex variations.’
- Many with an I/VSC prefer the umbrella term VSC or I/VSC or reference to their specific variation, for example, Congenital Adrenal Hyperplasia, Klinefelters Syndrome, or Androgen Insensitivity syndrome.

One stakeholder told us that:

‘Use of language is crucial as it is important to be able to define who we are instead of having others come-up with labels for us, often objectifying us. [...] “DSD- Disorders of Sexual Development” is truly offensive and a medically created term. [This term] arose from the widely felt oppressive language of ‘disorder’ but does not reflect how I see my condition.

I am happy to have a descriptor of my condition however, I prefer the term I/VSC as this is inclusive of people with a wide range of conditions and variations. It is also neutral and from my experience widely accepted and now used.

This term does not trigger trauma as the medical DSD does and nor is it seen as too ‘political’ which the use of Intersex can be perceived to be which detracts from inclusive work for change.’

Another told us that:

‘I do not like being called Intersex as this doesn’t describe me. I don’t like being called ‘disordered’ so don’t like DSD. I am happy to be called by the name of my condition however, if working with others I [feel] that VSC is good as this is what I have and names me correctly.’

³⁹ This was to include any time they may have been bullied, persecuted, denied services, experienced institutional bullying or prejudice etc. Additionally we stated that this could be any time that they felt fear, alarm or distress due to the actions of others based on their (or perception of them having) a VSC or being intersex.

4) Concluding comments and recommendations concerning terminology used within the Bill.

For these reasons, we recommend that the terminology used within Scottish Hate Crime Legislation should reflect both international practice and the preferred terminology of those with a variation in sex characteristics living in Scotland and the rest of the UK. Therefore, we recommend the abbreviation 'I/VSC', the use of 'Variations of/ in Sex Characteristics' (VSC) and the use of 'intersex' as terminology within legislation.

Additionally,

- Particularly as the term 'intersex' is associated with transgender and non-binary for the general public, we also suggest that it is made clear that this umbrella term refers to a multitude of biological variations in sex characteristics and where possible some of these specific variations should be exemplified.⁴⁰
- Having a biological variation in sex characteristics is entirely different from identifying with a gender other than the one assigned at birth.
- It should also be made clear that I/VSC is not necessarily expressed as a social identity but is always a physical variation in biological sex characteristics.
- It is clear that people may need (and prefer) to use different umbrella terms in different contexts
- It is vital that the terminology used within this legislation is to be acceptable to and inclusive of the widest possible of those affected by an I/VSC:
 - It must also be inclusive enough to ensure that not only are people protected (clearly covered) under the legislation but also that a perpetrator of a hate crime based on the perception of someone having an I/VSC would be brought to justice, and a victim would not fall prey to a gap in the legislation.
 - It is not necessary that this terminology align with a laypersons understanding but instead must be clear to the persons who will enforce this legislation. For this reason language must be wholly inclusive of all with I/VSC as ensuring those with an I/VSC are comfortable with the language is crucial in ensuring they are comfortable reporting hate crimes they face.

⁴⁰ Hegarty et al (in press)

III) Lived experience of hate crime, prejudice, and discrimination perpetrated based on the perception of difference due to having an I/VSC

1) Necessity to understand hate crime as experienced by individuals living with a variation in sex characteristics.

- Anecdotally we know that individuals are subject to discrimination, prejudice, and bullying including such that has caused fear and alarm due to being perceived as 'different' due to having an I/VSC.
- I/VSC prejudice and discrimination can cause extreme internal distress and can take many forms in public life, including but not limited to in school, in the streets, and in the workplace. This can and does affect other social issues such as unemployment and poverty.
- Indeed, medical interventions have long been based on the rationale that social stigma causes unbearable distress, such that medical intervention is the only viable option:

*'The ultimate goal of medical and psychological interventions in this area is to avoid and to alleviate the impact of stigma on psychological well-being, and those risks are understood to be located within social reactions to intersex traits.'*⁴¹

- Hate Crime statistics detailing the number of people who have an I/VSC who have suffered a hate crime or incident based on the perception of having an I/VSC, are not currently available. This is due to the fact that I/VSC has not previously been its own distinct characteristic within hate crime legislation.
- The lack of a specific I/VSC category might be, at least partially, responsible for the lack of reporting.
- Associated stigma and taboo felt may also have had an effect on whether or not an individual would report such an incident.⁴²

⁴¹ UK Government Equalities Office (2018) LGBT Survey Research Report. Ibid: 26

⁴² According to the UK GEO's LGBT Survey Research Report (2018) 'Empirical studies of stigma and public understanding [of I/VSC] are lacking³¹' (ibid.02) and there has been a call from intersex advocate and experienced clinical psychologist, Dr Lih-Mei Liao, for studies of public understanding and stigma dating back to 2014. (Liao, L. M., & Simmonds, M. (2014). A values-driven and evidence-based health care psychology for diverse sex development. *Psychology & Sexuality*, 5, 83–101.) Very few studies of the general public have examined stigma or understandings about intersex and variations of sex characteristics, but those studies have shown that intersex traits can be framed in either medical or psychosocial terms. We believe it is important to examine the perception of I/VSC within the general public.

- The inclusion of I/VSC within this legislation will significantly improve this situation by increasing visibility and awareness that a hate crime perpetrated on this basis is wrong and should be reported.
- Additionally, this visibility provides a basis for educating those in front line services, emergency services, in social services, and the police force etc. about I/VSC.

2) Living in Scotland with an I/VSC

Again, there are findings within the initial survey analysis of the Equality Network I/VSC Survey, done for the purpose of providing evidence to the Hate Crime Bill Stage One evidence gathering exercise, that are important to highlight here. These provide an important intra-personal and social context in which to frame the inclusion of I/VSC within Hate Crime legislation in Scotland.

It is worth considering these statistics and this qualitative data in relation to areas of social life as they may have a direct impact on both experience of and perpetration of hate crimes and prejudice based on a person having an I/VSC. They serve to begin to highlight why it is essential that this be an included characteristic within hate crime legislation.

- 82% (n17⁴³) of our survey respondents stated that they had difficulties with mental ill health.
- Twenty-five per cent (n1920) of I/VSC respondents to the UK GEO LGBT Survey had accessed mental health services in the 12 months preceding the survey. A further 13%, however, had tried to access mental health services but had been unsuccessful.⁴⁴
- 'Intersex respondents were more likely than non-intersex respondents to have found accessing mental health services difficult. 37% stated that accessing mental health services had not been at all easy, compared to 28% of non-intersex respondents.'⁴⁵

Additionally, we point to the GEO's finding that:

- 'Intersex respondents were more likely to report that their GP had not been supportive (19%) than non-intersex respondents (16%), and also more likely to say that their GP had not known where to refer them (13%) than non-intersex respondents (11%)'⁴⁶

⁴³ Where 'n' is the number of respondents who answered this question.

⁴⁴ UK Government Equalities Office (2018) National LGBT Survey Research Report: 243

⁴⁵ Ibid: 243

⁴⁶ Ibid: 244

Respondents to the Equality Network Survey stated that:

'I felt very lost and alone when discharged at 17 I felt different. My plans to have 4 kids was up in smoke. When I met my first boyfriend, he wanted kids so dumped me when he found out. When I eventually married, I was very depressed about infertility. I went to see about IVF as my sister had said she would surrogate. My husband refused to get his sperm tested. He refused to foster or adopt. I got more depressed. Eventually I divorced him. MRKH affects you throughout your whole life. I have been ill and [I] am now single again, and [I] am back dilating. It's depressing at times.'

'[Having a VSC] messes up with your head and you feel like you can't talk to anyone, that's why I don't mind talking about it.'

'My depression has always been associated with my feelings of being damaged goods.'

'I have found having MRKH to be upsetting and stressful, at times. I think finding out that your body is not the one you thought, and some of your life plans will not be happening, is quite a lot to take on board in your teens. This has definitely had an impact on my confidence and my understanding of myself. I know that depression is quite high among infertile people. I think that is probably applicable.'

'It affects who you trust [and] how you live your life [as well as] who you tell...most of all people's total lack of knowledge. I have been asked 'if I am like a doll down below'...total ignorance.'

'Depression started shortly after diagnosis.'

'The Scottish Government should be aware of the harassment and abuse people with DSDs can experience, as this is obviously detrimental to people's mental health.'

As a result of harassment and abuse people with an I/VSC may suffer from minority stress, a factor in poor mental health, and a potential to withdraw from aspects of social life. The 10-year medical consensus update on the Chicago Consensus acknowledged the possibility of minority stress; heightened stress experienced, and fear experienced by members of stigmatised minority groups that impacts mental health⁴⁷. That 10-year

⁴⁷ Clark, R., Anderson, N.B., Clark, V.R., & Williams, D.R. (1999). Racism as a stressor for African Americans: A biopsychosocial model. *American Psychologist*, 54, 805-816;

Meyer, I.H. (2003). Prejudice, social stress and mental health in lesbian, gay, and bisexual populations: Conceptual issues and research evidence. *Psychological Bulletin*, 129, 674-697;

medical update called for studies on minority stress among IVSC populations and called for studies on minority stress among I/VSC populations.⁴⁸

- 86% (n14) of our survey respondents stated that they had suffered trauma in relation to their I/VSC status.
- 94% (n16) of our survey respondents stated that they had low body confidence and 75% said that they felt shame about their body.
- 36% (n14) of our survey respondents felt uncomfortable due to other people's lack of knowledge or understanding regarding I/VSC.
- 60% (n15) of our survey respondents said that having an I/VSC affected their social relationships.
- 20% (n15) of our survey respondents did not enjoy school, with only 73% sometimes enjoying school.

Many of our respondents had been bullied at school due to perceived difference. They told us that:

'Primary School from age 4 to 11 was on the most part good. Secondary School from age 11 to 16 was hellish for the most part due to being so different, being bullied was a multiple times per day occurrence.'

'I got bullied, called names. Asked if was a boy or a girl'

'I was bullied and socially excluded but academically gifted and loved learning.'

'[I was] bullied by classmates and teachers. Teachers did not see a struggling child but just assumed I was badly behaved, e.g. humiliated most days by teacher for needing to go to the toilet frequently, which often goes with Turner Syndrome. Humiliated by teacher for becoming lost in familiar surroundings, also a common feature of Turner Syndrome. Humiliated by teacher for always being clumsy and dropping things- Turner Syndrome'

Frost, D. (2019). Hostile and harmful: Structural stigma and minority stress explain increased anxiety among migrants living in the United Kingdom after the Brexit referendum. *Journal of Consulting and Clinical Psychology*, 88, 75-81.

⁴⁸ Lee P.A.a · Nordenström A.b · Houk C.P.c · Ahmed S.F.d · Auchus R.e · Baratz A.f · Baratz Dalke

K.g · Liao L.-M.h · Lin-Su K.i · Looijenga 3rd L.H.J.j · Mazur T.k · Meyer-Bahlburg H.F.L.l · Mouriquand P.m · Quigley C.A.f, n · Sandberg D.E.o · Vilain E.p · Witchel S.q · and the Global DSD Update Consortium (2015) Global Disorders of Sex Development Update since 2006: Perceptions, Approach and Care. *Hormone Research in Paediatrics* 2016;85:158–180 DOI: 10.1159/000442975 Available at <https://www.karger.com/Article/Pdf/442975>

again. Lots of other examples. Other pupils saw teacher's behaviour and took their example from it.

One stakeholder shared her experience of school for the purpose of providing this evidence document, she said:

I remember being the first girl to wear a bra and the other girls laughing at me when they could see it through my PE T-shirt.

I remember having to get changed separately (an agreement my mum made with the teacher) to avoid the other kids commenting on my early puberty. It worked but I often faced many questions.

The teacher did discuss moving me up into the year above so that I would fit in better, being so tall and developing so early, but my mum didn't want to split me up from my friends.

I remember comments about having hairy arms, and legs, and a "moustache". But I think I avoided too many comments by either removing the hair as often as possible or covering up all the time. At age 16, I had laser hair removal which helped to stop any further comments.'

It is worth noting that this kind of school bullying is one rationale given for infant genital surgery, particularly on the most "visible" genitalia (the clitoris, the penis). If surgery is performed with the intention of avoiding social bullying or prejudice and hate crime, it is vital that this be addressed within hate crime legislation itself perhaps negating the need for this intervention. Bioethicists described surgeries as being performed to avoid bullying but at the risks to social function. Addressing prejudice through legal means such as hate crime law, reduces the need for surgeries that are at the centre of global human rights debates.⁴⁹

A finding in the Hegarty et al.⁵⁰ (2020) study is that lay people are much more in favour of medicalising I/VSC (and less supportive of a variety of social responses, including the kind of legislative inclusion proposed within the Hate Crime Bill, if they had measurably stronger "gender binary beliefs" (a belief that there are only two genders, male and female). In other words, people opposed the kind of inclusive legislation the Scottish Government is aiming for here if they thought that (1) there are only two genders and (2) gender is always aligned with genital anatomy. Therefore, this data outlined here makes the important points that although having an I/VSC is not the same as being trans, both groups of people suffer prejudice and harassment (and in

⁴⁹ SEE: Weisemann, C., Ude-Koedler, S., Sinnecker, G.H.G., & Thyen, U. (2010). Ethical principles and recommendations for the medical management of differences of sex development (DSD)/intersex in children and adolescents. *European Journal of Paediatrics*, 169, 671-679.

⁵⁰ Peter Hegarty, Lois Donnelly, Paul Francis Dutton, Sara Gillingham, Valentino Vecchietti, Kaz Williams (2020 – unpublished – in press) Understanding of Intersex: The Meanings of Umbrella Terms and Opinions about Medical and Social Responses among Lay People in the USA and UK. *Psychology of Sexual Orientation and Gender Diversity*.

other areas are neglected and silenced) by the same normative binary system of gender.⁵¹

With regards to the workplace;

- 47% (n15) of our survey respondents were open at work with an employer or human resource department about their I/VSC status. 33% were open with their colleagues. 21% said that their privacy had not been respected concerning their I/VSC at work.

In relation to bullying and discrimination at work, respondents told us that:

'I was asked if I was a man or a woman, they drew derogatory images on my name badge and hung it up in the break room.'

'I was groped and talked about to determine if I had a penis or not.'

A stakeholder also told us that;

At work, people [have found] out about my condition and thereafter treat[ed] me differently, as an 'other'.

From the Equality Network Survey, related to prejudice, discrimination and hate crime as a person with an I/VSC

- 40% (n15) of our survey respondents stated that they and experienced prejudice, bullying and negative comments at work due to having an I/VSC.
- 50% (n10) of our survey respondents had experienced a hate crime on the basis of having a I/VSC.
- 43% (n14) of our survey respondents had experienced difficulties or issues within public bodies such as schools, hospitals or with the police due to having an I/VSC.

3) Stakeholders on their experiences of hate crime due to having I/VSC:

In relation to experiences of prejudice and / or hate crime or hate incident we have gathered some qualitative data that is important to share in light of this call for evidence regarding the inclusion of I/VSC in Hate Crime legislation in Scotland:

⁵¹ A nationally representative sampled study showing a relationship between belief in binary gender and transphobia is:

A.T.Norton & G.M. Herek (2009). Heterosexuals' attitudes toward transgender people: Findings from a national probability sample of US adults. *Sex Roles*, 68, 738-753

One stakeholder told us:

'I have been subject to bullying on social media by members of the public, when they have read my story. I received a couple of calls for me to be killed over social media in February 2020.'

'[At] Easter [time in] 2020 I had eggs thrown by a neighbour at my car. This was reported to the police.'

'In the street when I was wearing a t-shirt with 'intersex' printed on the front, a man screamed at me that I was "possessed by Satan along with paedophiles & rapists" backed by a group of friends.'

'I had rumours spread about me amongst dozens of Church goers at social/family events, after writing about my lived experience, that I was "really a man and had bad intentions".'

'I have had people sit beside me and start praying uninvited that I be healed.'

'I have asked for specific safeguarding measures to be put in place by Church, but they have been denied until such time as the whole Church has a debate on the I/VSC ([this has] been ongoing for five years).'

[I have] had various discussions about my 'variations' happen in the workplace, whilst I was not present. Also, experienced some bullying.

Another told us that:

'[I have experienced] bullying due to delayed puberty and atypical secondary sex characteristics. I am also familiar with other people's experiences, which are similar to mine, including bullying and inappropriate comments by teachers.

'Also, I have experienced prejudice and inappropriate comments in the health care system, during a visit in regards to an unrelated issue.'

'I am also aware of instances of violence and threats of violence, including sexual violence, against some of my intersex friends who have non-typical secondary sex characteristics.'

Finally, another stakeholder with an I/VSC told us that:

Experiences at the hands of medical professionals as a child/young person and continuing into adulthood include unnecessary examinations, intrusive questioning, and being made to feel as if I was an object of curiosity.

As a child then young person I was endlessly and persistently bullied at school by peers and teachers for the way I looked. Comments about my body hair, body shape, strength and generally what was perceived as 'difference'. This included verbal and physical abuse and being deliberately left out.

I was forced to stop sport, even though I was very good, on a false basis and physically restrained to prevent me competing on more than one occasion. Others refused to take sport with me as I was 'weird' and 'not like a girl'.

[I suffered] public shaming in shops and on the streets including verbal abuse and people commenting on [my] appearance.

[A] GP described me as 'not normal' and denied [me] medication as 'too expensive' and put on cheaper version without myself or my consultants permission.

[I have experienced] rejection in social situations, people questioning who and 'what' I was.

[I] have self-excluded from certain professions due to anxiety about bullying and being seen as too 'different' based on experiences.

[I have felt the] impact of internalised feelings of shame, difference, and having to hide who I am due to knowing how people would react. [I have] protect[ed] myself.

At times [I have not received] the right medical treatment as not seen or helped like others, as due to my variation [I was] told not to expect a 'normal life'. [I] have to fight for medical treatment and to be treated with level of respect [rather than] just as a curiosity.

This stakeholder's experiences touch on prejudice within school, within medical establishments, within sport, in social situations, at work and in one's career. The previous two stakeholders touch upon experiences of prejudice within the church, at work, and in public places, by neighbours and on social media, as well as experiences of threats of violence and sexual violence. These individuals have experienced prejudice, hate incident, and hate crime because they have an I/VSC. We feel that this is a clear case for the inclusion of I/VSC as a category within Hate Crime legislation in Scotland.

IV) Regarding the inclusion of I/VSC as a distinct category within Hate Crime legislation in Scotland:

1) Visibility and empowerment

- The inclusion of I/VSC within this legislation will acknowledge that a hate crime based on I/VSC is unacceptable, thus empowering those affected. For the first time UK legislation would acknowledge the problem thus making a positive step towards improving social life and life outcomes for a person with an I/VSC.
- We are aware that many people born with an I/VSC are told from a young age never to discuss their variation in sex characteristics with others. For that reason, it is very important that I/VSC be included within this legislation to ensure that people are able to speak out about potential hate crime, to report it, and to know that they are right to do so.
- There is considerable evidence that both parents and young people themselves maintain secrecy regarding their I/VSC, many due to a fear of stigma.⁵²
- Removal of I/VSC from this legislation strengthens the norm against speaking about one's Variation in Sex Characteristics when it may be necessary or useful to tell others about it.
- Visibility of I/VSC within legislation will empower people to report hate crime perpetrated on the basis of perception of an individual having an I/VSC.
- In the absence of I/VSC specific law that people with I/VSC will face a double bind between (1) not reporting hate crime vs (2) reporting it as anti-LGBT hate crime (which in most cases won't fit with their definitions of who they are.)

2) Stakeholders on why I/VSC should be included as a distinct category within hate crime legislation

Stakeholders with an I/VSC provided us with detail on why they felt it necessary that I/VSC should be included as a distinct category within hate crime legislation. They told us that:

'[This inclusion] will enable safeguards to be put in place in the workplace (and Church, if not exempted). Occupational Health tended to rely on protections for people with 'disabilities' to support me, as I/VSC was not a protected characteristic.

⁵² Roen, K. (2019). Intersex or diverse sex development: Critical review of psychosocial health care research and indications for practice. *Journal of Sex Research*. DOI:

10.1080/00224499.2019.1578331.

The Police have also been very supportive, but it is a 'grey' area which needs to be clarified.'

Another informed us that:

'It is a necessary step to make sure people like me have an option of looking for help and remedy should we experience hate speech, bullying or violence again. It would be the right signal to send to potential perpetrators. It would also be a signal to police as currently many of us do not have the confidence to report any incidents as the awareness of intersex issues and challenges we face is very limited.'

In addition, another told us that:

As the situation stands crimes against us are often hidden as those who take reports have nowhere to record those specific incidents against us. It is in part due to the so long invisible struggles we have faced, not being able to name what is happening to us, and feeling above all such a deep sense of shame.

To have it stated in law that what we experience is a hate crime would have powerful psychological impact

For too long these experiences have been internalised, we feel it is our 'fault', we are 'freaks' and it is up to us to change our lives so we are not out there in public or make every effort to alter ourselves.

This legislation would give confidence to people to know they do not have to take this treatment, that we do have rights and a voice and are entitled to be who we are without fear.

Finally, another stakeholder informed us that:

We need to know that what we go through because of our conditions is not right and not our fault.

If teachers at school, college and work as well as family knew we were protected from this bullying and discrimination then maybe things would have been different.

As an adult, I could have been protected and not felt so ashamed of who I am and what I look like.

My life could have been different if this legislation was in place in the choices I have made and my confidence and also work opportunities.

Again, we feel that the lived experiences of people with I/VSC speaks for itself. It is imperative, for the wellbeing of those with I/VSC that this be included as a category within Scottish Hate Crime Legislation and we welcome the bill, which as proposed, would do so.

V) Regarding the separation of I/VSC from trans identity and the distinct inclusion of I/VSC as a characteristic within hate crime legislation in Scotland:

We welcome the fact that this legislation proposes to separate and distinguish I/VSC from trans. Having a biological variation in sex characteristics is entirely different from identifying with a gender other than the one assigned at birth.⁵³

⁵³ Scientists are increasingly understanding the complexity of these issues and that the “gender built on sex” model is not enough: Van Anders, S. (2015). Beyond sexual orientation: Integrating gender/sex and diverse sexualities via sexual configurations theory. Archives of Sexual Behavior, 44, 1177-1213.