

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM VICTIM SUPPORT SCOTLAND

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 – Victim Support Scotland considers that there is a need for the Hate Crime and Public Order (Scotland) Bill and that it forms the cornerstone of a zero tolerance approach to hate crime that reaches across the Scottish Government, criminal justice agencies and wider civil society.

The Bill makes hate crime and its impact on individuals, and the wider communities they are part of, visible. This serves to recognise how protected characteristics shape and intersect with identity and that this has a role to play in how others will treat individuals and groups in society, especially when this leads to damaging and traumatic experiences.

Victim Support Scotland runs designated Third Party Reporting centres across the country to enable anyone who does not feel able to report a hate crime or hate incident, to come forward and report the crime without going directly to the police. For people who feel marginalised in society, having a trusted and neutral organisation they can go and make their experiences heard can make a huge difference to their wellbeing and confidence about coming forward to report a crime.

Provision of trusted, community-based resources should be given greater consideration as part of the Hate Crime and Public Order (Scotland) Bill and how these can be extended to address the rising demand which was noted in the Hate Crime in Scotland 2019-20 report. Investment is required in better communications to improve hate crime reporting. This includes awareness raising at a general population level; campaigns targeted at specific communities; greater clarity of language to assist people to recognise hate crime when they come across it; and active promotion of third-party reporting.

Following our organisational restructure and as part of the delivery of Victim Support Scotland's strategic plan 2018-21, we are giving greater consideration to how the organisation can develop to meet areas of unmet need. Victim Support Scotland has formed an internal Equality Network to examine our own practices in terms of equality, diversity and inclusion. This is to enable us to put measures in place to better support victims and witnesses of crime from all backgrounds and parts of the community. Placing a requirement on police, other criminal justice agencies and local authorities to look at their work through these lenses of equality, diversity and inclusivity to address

areas where the protected characteristics laid out in the Hate Crime and Public Order (Scotland) Bill could impact how service users are treated. Legislating against hate crime supports these bodies to fulfil their public sector equality duty to promote good relations between those who share a protected characteristic and those who do not. The Standards of Service annual reporting could act as a model for how this could be achieved.

Victim Support Scotland supports the establishment of a national hate crime strategy and action plan that is framed around the themes of Prevention, Responding and Reporting, as per the suggestions made in Lord Bracadale's report. This should provide direction on the priorities for Government, the responsibilities of public bodies and agencies and how they should engage with each other and the wider set of stakeholders in order to focus collective resources on government priorities.

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?

Victim Support Scotland is of the view that any move which makes it clearer and easier for victims to access their rights and understand what measures and support are available to them is desirable. Currently, individuals might experience multiple forms of hate crime which are covered by distinct laws. Consolidation of these laws into one piece of legislation has the potential to simplify the criminal justice journey for individuals, which Victim Support Scotland advocates for across the country. For example, the current 'stirring up of racial hatred' offences are contained in the Public Order Act 1986. A victim or witness to a hate crime with no prior or working knowledge of Scots Law may be unaware that such provisions exist or know where to begin to look for support before deciding whether to report an offence or seek legal representation.

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?

Victim Support Scotland supports the statutory aggravation model as the core method for prosecuting hate crimes in Scotland. The impact of hate crime is frequently more profound and longer lasting than that of other crimes as it is an aspect of an individual's core identity that is under attack. The statutory aggravation model allows aggravations to be recorded, facilitating the identification and monitoring of trends. With this information the justice system can put measures in place to combat as hate crime evolves. Victim support services can also adapt their support appropriately.

Victim Support Scotland notes that the Working Group on Hate Crime has recommended a 'statutory aggravation for crimes motivated by malice or ill-will towards

an individual based on their sexual orientation, transgender identity or disability'¹ and religious beliefs as a means for prosecuting hate crimes in Scotland and that there be a specific statutory aggravation of domestic abuse. This idea was ultimately to develop this provision into the Domestic Abuse (Scotland) Act 2018.

Organisations such as Engender, Scottish Women's Aid, and Rape Crisis Scotland, have cited concerns about the creation of a 'two tier' response to violence against women offences resulting from the creation of gender aggravation². The report by Engender entitled 'Making Women Safer in Scotland: the case for a standalone misogyny offence'³ states that there is a risk that this would see some crimes of rape and sexual assault against women as gender-related and some not.

Due to the lack of consensus around this issue, Victim Support Scotland support the move to establish a working group to further examine the need for a standalone misogyny offence that may be added to hate crime legislation at a later point in order to create legislation which is effective and fit for purpose.

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 measures 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?

Victim Support Scotland supports the inclusion of a new statutory aggravation on age hostility to Scottish hate crime legislation but note that there is a level of opposition to the introduction of vulnerability as an aggravation. Lord Bracadale recommended that a statutory aggravation for vulnerability be introduced outside of hate crime legislation. From the position of some Victim Support Scotland service users, this would acknowledge that people from all parts of society could be targeted due to some form of identified vulnerability and this should be addressed through the criminal justice system. This would also ensure that people shouldn't be seen as vulnerable by default of a protected characteristic.

Members of the Glasgow Hate Crime Working Group (part of the Safe Glasgow Partnership), which Victim Support Scotland is part of, felt it was necessary for a distinction between vulnerability and hostility to be clearly drawn and that it is particularly relevant for age-based hate crimes. Operational guidance is required to support police and prosecutors on making a clear distinction between vulnerability and hostility.

It is important to distinguish between offences that are motivated by hostility, which are hate crimes, and offences that could be described as opportunistic, in the sense that an offender identifies a vulnerability and exploits the vulnerability by engaging in criminal

¹ Scottish Government. (2004) Working Group on Hate Crime Report. Scottish Government. <http://www2.gov.scot/Publications/2004/10/20027/44266>

² Equal Opportunities Committee, Scottish Parliament. (2008) Report (Session 3) of the Offences (Aggravation by Prejudice) (Scotland) Bill. Scottish Parliament. https://www.parliament.scot/S3_EqualOpportunitiesCommittee/

³ <https://www.engender.org.uk/content/publications/Making-Women-Safer-in-Scotland---the-case-for-a-standalone-misogyny-offence.pdf>

behaviour. There could be operational confusion between an aggravation by prejudice and an aggravation by vulnerability. A separate aggravation for vulnerability that sits outwith hate crime legislation could help to clarify and address this. This is particularly relevant to older people, disabled people and people with vulnerabilities that are not related to protected characteristics who may not self-identify as being vulnerable. This may be a significant factor in disability hate crime having been historically underreported.

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?

Considering the complex and historical nature of sectarianism in Scotland, as well as its close association with sport, consideration should be given to forming a working group to discuss whether a statutory aggravation relating to sectarianism or a standalone offence should be created and added to the Hate Crime and Public Order (Scotland) Bill using a similar approach to the working group on misogyny which is to be established.

Given their vulnerability and the evidence of the prejudice they experience, marginalised groups such as individuals living with a mental health condition, homeless people, members of the Gypsy, Roma and Traveller communities, and asylum seekers and refugees, deserve to also be considered for protection by hate crime legislation. A standalone offence in these areas could be created and added at a later point as part of the ongoing commitment to take a zero-tolerance approach to hate crime in Scotland.

Stirring up offences

6. Do you have views on the merits of Part 3 of the Bill and the plans to introduce a new offence of stirring up of hatred?

Victim Support Scotland is hopeful that the introduction of a new offence of stirring up hatred would allow for appropriate support resources to be put in place for individuals and communities that are repeatedly subject to abuse in the form of sweeping statements and harmful stereotypes. The stirring up hatred offence would ensure that a hate crime is acknowledged as having a far-reaching impact beyond the targeted individual.

It also goes some way to acknowledging the different ways in which a stirring up offence can occur, for example, behaviour online through social media, and how this can go on to result in a hate crime offence as defined in current legislation to be committed. This acknowledges the lasting and devastating impact that behaviours which may be considered to be 'low-level', such as verbal abuse on social media or behaviour which is directed towards a marginalised group as a whole, has on the victim who has been subjected to a number of micro-aggressions from a variety of sources.

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?

Victim Support Scotland has previously stated our support for the recommendations in Lord Bracadale’s report which considered the inclusion of ‘insulting’ to be a technicality that had not resulted in a prosecution of a racial hatred offence as it had already been found ‘threatening’ and/or ‘abusive.’ It is also out of step with hate crime legislation elsewhere in the UK which could result in confusion.

On this basis, provided the inclusion or exclusion of behaviour as ‘insulting’ does not adversely impact anyone affected by crime, Victim Support Scotland can support this language change.

Other issues

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

Protection of free speech is vital to maintaining a diverse, representative and democratic society that is tolerant of a range of viewpoints which can co-exist without damaging the rights of a marginalised group or community. This right is enshrined in Article 10 of European Convention on Human Rights.

There is currently a lack of clarity amongst the public on how ‘threatening and abusive’ behaviour and language is defined, particularly in relation to social media. Going forward, this needs to be considered in the language of the legislation so that it can be clearly understood to ensure the provisions of the Bill can be an effective measure that tackles hate crime in Scotland.

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?

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

Victim Support Scotland understands that the offence of blasphemy is considered to be no longer necessary or appropriate in Scots law with no prosecution for a blasphemy offence having been made for more than 175 years.⁴ It was abolished in England and Wales in 2008 and that the offence of blasphemy was repealed from the Irish constitution in 2020 following a public referendum.

On this basis, provided the abolition of the offence of blasphemy does not adversely impact anyone affected by crime, Victim Support Scotland can support this language change.

⁴ Hate Crime And Public Order (Scotland) Bill Information Note
<https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2020/04/hate-crime-bill-what-it-will-do/documents/hate-crime-bill-information-note-blasphemy/hate-crime-bill-information-note-blasphemy/govscot%3Adocument/Hate%2BCrime%2Band%2BPublic%2BOrder%2B%2528Scotland%2529%2BBill%2B-%2BInformation%2BNote%2B%2B-%2BBlasphemy%2B-%2BApril%2B2020.pdf>