

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM LGBT YOUTH SCOTLAND

LGBT Youth Scotland’s vision is that Scotland is the best place to grow up for lesbian, gay, bisexual, transgender and intersex young people. We play a leading role in the provision of quality youth work to LGBTI young people that promotes their health and wellbeing, and we are a valued and influential partner in LGBTI equality and human rights.

General

LGBT Youth Scotland welcomes the Scottish Government’s intent to consolidate and simplify hate crime legislation in Scotland. Our research¹ shows that LGBT young people are disproportionately affected by hate crime with 35% of LGBT young people, 41% of trans (including 51% of non-binary) young people stating that they had experienced a hate crime within the previous year. The same research also shows that there was confusion about what constitutes a hate crime. When asked what they understood about what constitutes a hate crime, some respondents stated:

- “I don’t know where the line is drawn”
- “I find the subject difficult to understand”
- “I have no idea what qualifies”

We hope that with consolidation of hate crime legislation, and an appropriate public information campaign, some ground could be covered to erode confusion of what constitutes a hate crime in Scotland.

LGBT Youth Scotland welcomes the removal of people with intersex conditions from the transgender category, and the introduction of a new category for intersex / Variations in Sex Characteristics (VSCs), as this is distinct from transgender identity. Young people with this condition that we work with most commonly use the term intersex, but also recognise and identify with the term VSC, although the latter is more commonly used in a medical context. We therefore welcome the terminology VSC being used in the Bill. This understanding of terminology is reflected by research undertaken by Equality Network who also welcome the use of VSC in the Bill – please see their response for a fuller discussion of the history and appropriateness of this language.

LGBT Youth Scotland agrees with Paragraph 8 of the Scottish Government’s Policy Memorandum relating to the Hate Crime and Public Order (Scotland) Bill, which states that introduction of this Bill will send a strong message of an inclusive and equal society. However, more work needs to be done outwith the legislations capacity to

¹ Lough Dennell, B.L., Anderson, G. and McDonnell, D. (2018) Life in Scotland for LGBT Young People. Available online: www.lgbtyouth.org.uk/media/1354/life-in-scotland-for-lgbt-young-people.pdf

improve reporting and LGBTI people's experience of the criminal justice system, and recording of hate crime where homophobia, biphobia and transphobia is a factor.

Our research² shows that less than half (48%) of LGBT young people are aware of the rights under existing hate crime legislation. Less than a third (31%) of LGBT young people and less than a quarter (23%) of trans young people said they would feel comfortable reporting a hate crime to the police. Common barriers that young people reported were of being taken seriously by the police; police themselves being discriminatory; police not understanding LGBT identities or a fear that they may be 'outed' to others (such as parents) without their permission or knowledge.

To encourage reporting we welcome a public information campaign to improve this legislation's implementation and clear supporting information with a focus on explaining what constitutes a hate crime, how hate crimes can be reported and what happens once a hate crime has been reported. Police Scotland should also identify strategies to engage with the LGBT young people across Scotland and build relationships. This could be achieved through publicised Community Liaisons or LGBTI Liaison Officers who would have a specific role in building relations with LGBT organisations, the LGBTI Reference Group and venues. For LGBT young people, School Liaison Officers could also play a key role in supporting LGBTI young people to report incidents and deliver work linked to the Scottish Government's anti-bullying strategy 'Respect for All'.

Furthermore, we believe that the Scottish Government has to build trust with the relevant authorities and stakeholders to improve responses to LGBTI young people experiencing hate crime. Consistent and upscaled LGBTI-specific training is therefore needed for front line Police Scotland staff and Procurator Fiscal office staff, including Victim Information and Advice service staff.

Consolidation

Consolidation of hate crime legislation is beneficial as there will be less ambiguity about what constitutes a hate crime. It will also enhance the ability of the Scottish Government and key stakeholders to communicate information regarding hate crimes. This would be a significant advantage for LGBTI young people who are looking for information regarding what constitutes a hate crime, as well as how they can report a hate crime.

LGBT Youth Scotland call for a statutory duty to be placed on Police Scotland to report the number of hate crimes reported under each category. This is supported by a number of equalities organisations across Scotland. This amendment would allow the Scottish Government and stakeholders to identify and, importantly, respond to any emerging national or local trends. For example there was evidence of a racist hate crime spike in England and Wales associated with Brexit³ – but this could not be monitored in Scotland as the data is not recorded in a manner which can be disaggregated and analysed.

² Ibid

³ For example: <https://www.bbc.co.uk/news/uk-wales-48692863>

How to Prosecute Hate Crime

LGBT Youth Scotland joins the calls from the children and young people's sector including Children in Scotland and Together to include 'age' as a standalone category in Scottish hate crime legislation.

LGBT young people can face discrimination or prejudice in relation to their age as well as their gender identity and/or sexual orientation. For example, adults not taking them seriously if they come out as trans or as lesbian, gay or bisexual as they may be deemed by some to be 'too young' to know this information about themselves.

We know that hate crime significantly impacts the lives of LGBT young people. Analysis of our 2018 survey⁴ found that those who described themselves as 'unhappy' or 'very unhappy' were highly likely to have experienced a hate crime (50%). Whilst hate crime isn't the only factor here, it's arguable that hate crime forms part of a larger set of experiences of LGBTI young people, which can have an enduring impact on their lives and mental health.

People aged 16 – 24 are more likely to experience violent crime than any other age group⁵. Young people are therefore an at-risk group of violent and criminal behaviour and it stands to reason that some of this may be linked to prejudiced based views or hatred. To support effective responses and analysis an intersectional approach may be needed to consider 'age' alongside other protected characteristic that add to someone's vulnerability for being more susceptible to experiencing hate crime. We agree with YouthLink Scotland that age and vulnerability should be considered together.

Furthermore, having 'age' as a standalone category within Hate Crime legislation would provide improved alignment in legislation as 'age' is a protected characteristic in the Equality Act (2010). This also moves some way towards all protected characteristics in the Equality Act more often being recognised as victims of hate crime that require special consideration under law.

Stirring up Offences

LGBT Youth Scotland agrees with Together's position of connecting the UNCRC with young people's rights in relation to hate crime legislation. They state that the UN Committee on the Rights of the Child noted that all violence, harassment, and bullying are unacceptable in any context and violate a range of rights. The articles listed below are relevant for tackling hate crime against children and young people:

- Right to equality and non-discrimination (UNCRC Article 2)
- Freedom from exploitation, violence and abuse (UNCRC Articles 19, 34, 35, 36, 39)

⁴ Lough Dennell, B.L., Anderson, G. and McDonnell, D. (2018) Life in Scotland for LGBT Young People. Available online: www.lgbtyouth.org.uk/media/1354/life-in-scotland-for-lgbt-young-people.pdf

⁵ <https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/pages/7/> (font size)

- Freedom from torture or cruel, inhuman or degrading treatment (UNCRC Article 37)
- Right to private and family life (UNCRC Article 16)
- Right to life (UNCRC Article 6)
- Right to health (UNCRC Article 24)

Young people we spoke to further echoed the interconnection between human rights and hate crime protections:

“...offences should include conduct to be ‘harmful, stigmatising, threatening or otherwise abusive’ as stating conduct as only ‘threatening and abusive leaves’ out a multitude of microaggressions that people with each protected characteristic may face.” – Young Person, LGBT Youth Hate Crime Consultation, 2018.

We know that LGBTI young people can be extremely distressed by behaviour that stirs up hatred, against their sexual orientation and / or gender identity. This can result in large numbers of LGBTI people feeling vulnerable to attacks and many young people suffering from increased anxiety and poor mental health.

Stirring up of hatred can contribute to a social atmosphere in which discrimination is accepted as normalised. Some evidence in recent years of increased in homophobic and transphobic incidents and it has been suggested that this is directly linked to increasing negative messages regarding LGBT people in the media and on social media – for example see our response under the consolidation section regarding the hate crime spike in England and Wales associated with Brexit.

The TIE Campaign’s ‘Online in Lockdown’ report⁶ highlights that "LGBT+ youth reported experiencing online bullying during lockdown at more than double the rate of their heterosexual peers" which further evidences the homophobic and transphobic nature of attacks online. In recent years young people have also reported increased rates of transphobia on-line.

By legislating against such behaviour, we believe it will provide a deterrent to reduce this behaviour as well as provide as symbolic step to those affected by it.

At present offences relating to stirring up hatred apply only in relation to racial hatred (Public Order Act 1986) this change would bring parity to other groups vulnerable to hate crime in Scotland, including LGBTI people / young people.

Other Issues

LGBT Youth Scotland firmly believes that the right to freedom of expression is essential in a functioning democracy and helps progress society, through constructive debate, to become accepting of others and respectful of their rights to exist – this is particularly true in the evolution of rights that LGBT people have seen in the last few decades.

⁶ Available online:

<https://static1.squarespace.com/static/5cc7195fceaeb60001c9dc58/t/5efc64007deb1063e4510538/1593599201761/ONLINE+IN+LOCKDOWN-REPORT.pdf>

As is often the case with rights, there are areas where rights must be balanced – in this case the right to freedom of expression can come into conflict with the right to protection from discrimination and violence. The Equality and Human Rights Commission⁷ highlight how this balance should be considered in law:

“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. Accordingly, the ECtHR has confirmed that it ‘may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite or justify hatred based on intolerance.’”

The Bill as drafted rightly allows for freedom of expression and we believe the line of moving into an offence is clear.

LGBT Youth Scotland is concerned by the inclusion of section 12 of the Bill in relation to the stirring up of offences – particularly the inclusion of only two examples which would not meet the threshold on the grounds of sexual orientation and religion. Whilst we appreciate that this mirrors comparable legislation in England and Wales, it does not advance the rights of LGB people in Scotland.

Inclusion of section 12 (2) (b) in the bill “urging of persons to refrain from or modify sexual conduct or practices” could have unintended consequence, such as putting a ‘chilling effect’ on conversations around other legislative changes in Scotland. For example, if the Scottish Government were to pursue a ban of conversion therapy for both LGB and trans people (usually, but not exclusively affecting young people). It would be a significant problem if proponents of conversion therapy were able to point to recent hate crime legislation and say that conversion therapy is an extension of free speech exemptions protected under this legislation which allows them to “urge persons to refrain from or modify sexual conduct or practices”.

Conversion therapy⁸ is widely accepted as harmful to LGBT people with reported effects including depression and anxiety. All major psychological, psychotherapeutic and counselling organisations in the UK, including the British Psychological Society (BPS), British Association for Counselling and Psychotherapy, the UK Council for Psychotherapy, and NHS Scotland are clear that conversion therapy in relation to gender identity and sexual orientation is unethical, potentially harmful and is not supported by evidence.

LGBT Youth Scotland
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⁷ Freedom of Expression (2015), Equality and Human Right Commission, page 8. Available online: https://www.equalityhumanrights.com/sites/default/files/20150318_foe_legal_framework_guidance_revised_final.pdf

⁸ See here for more information: <https://www.lgbtyouth.org.uk/news/2020/lgbt-youth-scotland-respond-to-messages-regarding-conversion-therapy/>