

Response ID ANON-T58X-H9FR-J

Submitted to **Independent Review of Hate Crime Legislation in Scotland**

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What do we mean by hate crime legislation and why does it exist?

Do you consider that the working definition, discussed in this chapter, adequately covers what should be regarded as hate crime by the law of Scotland?

No

Please give reasons for your answer.:

We believe the term 'hate' itself is misleading and confusing. We suggest that 'bias-motivated crime' or 'prejudice-motivated crime' could be used instead to formulate a new working definition. Most victims or witnesses would find it easier to identify incidents or acts of crime motivated by bias or prejudice.

In Fife, we agreed on a working definition for all partners to use to record hate incidents/crime:

"Any incident which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice, hatred or ill will towards any social group."

Each of the terms 'prejudice', 'hatred', 'ill will' and 'social group' requires its own definition. This causes a great deal of confusion among partners, victims and organisations that support victims.

It would be more beneficial for organisations and victims if we can agree on a less complicated definition.

How can we prevent tensions and misunderstandings arising over differences in what is perceived by victims, and others, to be hate crime, and what can be proved as hate crime?

Please give reasons for your answer.:

It is a positive step that Police are expected to record hate incidents and investigate them to the same standard as hate crime. However, victims feel let down in their access to justice when, following their reporting a hate incident, it is established that it is not a crime and therefore no action will be taken by Police. Also, it is possible that it is established as a crime but the hate element cannot be proven, causing further distress.

There should be some prescribed actions that can be taken by Police or other Statutory Partners for addressing hate incidents. This way, the victims would feel they are being supported and they are likely to engage with statutory bodies in the future.

Another cause of tension that has not been stated in the review is the lack of information from COPFS. Neither the police nor victim is informed if and when the perpetrator(s) plead guilty. This leads the victim to believe that their case has not been taken forward by the police. Moreover, if COPFS decide to remove hate motivation from the prosecution, victims can also often feel let down because they feel their perception of motivation has not been dealt with appropriately. We would recommend that there has to be better communications between COPFS, Police and victims.

Furthermore, it would be helpful to have an easy to read leaflet explaining to the public what are the likely steps the Police, COPFS or other organisations may take after an investigation.

Should we have specific hate crime legislation?

Yes

Please give reasons for your answer.:

One recommendation would be to have one single hate crime legislation similar to the Equality Act 2010 to harmonise the different levels of protection for different social groups.

Another recommendation would be to utilise all functions in common law and legislations that address criminal or anti-social conducts/activities. A separate legislation to add aggravations motivated by bias/prejudice towards specified social groups.

Statutory aggravations: some issues

Do you believe there is a need to bring all the statutory sentencing provisions, and other hate crime offences, together in a single piece of legislation?

Yes

Please give reasons for your answer.:

As stated previously, we believe there is a stronger argument to harmonise the statutory aggravations as opposed to having a single piece of legislation to address hate crime offences. Because often the proof of the hate-motivation can detract the fact that criminal offences have been committed. Failing to produce corroborated evidence for hate-motivation should not prevent the perpetrators to be punished for their criminal offences.

Do you consider that the current Scottish thresholds are appropriate?

No

Please give reasons for your answer.:

Police or COPFS often interpret "evinced malice and ill-will" as whether offensive terms have been used e.g. racist or homophobic words. However, victims often feel the abusive behaviour is motivated by hate, bias or prejudice even though no offensive terms were used. We would like to suggest that similar to the Equality Act 2010, a comparator could be used, i.e. if the victim is of the same social group of the perpetrator, would the perpetrator behave the same way? Or why the perpetrator was only abusive to the victim and no one else in that particular situation?

Should evincing malice and ill-will be replaced by a more accessible form of words?

Yes

If you support that, please give examples of what might be appropriate.:

Should an aggravation apply where an offence is motivated by malice and ill-will towards a political entity (e.g. foreign country, overseas movement) which the victim is perceived to be associated with by virtue of their racial or religious group?

No

Please give reasons for your answer.:

We feel applying aggravation to political entity will be contentious and could potentially undermine the protection being afforded to certain social groups. For example, there are individuals who dislike UKIP because of their potential racist rhetoric. If those individuals choose to protest peacefully against UKIP, under new legislation, UKIP could argue that they are being harassed because of their political beliefs.

Should an aggravation apply where an offence is motivated by malice and ill-will towards religious or other beliefs that are held an individual rather than a wider group?

Yes

Please give reasons for your answer.:

We would advocate that aggravation should be applied regardless of whether the religious or other beliefs are being held by an individual rather than a wider group. In the case of Tanveer Ahmed, his motivation for murdering Mr Shah was because Mr Shah allegedly claimed to be a prophet. Whether other Ahmadis held the same belief as Mr Shah was irrelevant because Ahmed's conduct was religiously motivated.

Do you have any views about the appropriate way to refer to transgender identity and/or intersex?

Do you have any views about the appropriate way to refer to transgender identity:

We would welcome a separate recognition of intersex. Including intersex in the transgender identity could cause confusion for the victims or the wider public.

Does the current legislation operate effectively where conduct involves malice and ill-will based on more than one protected characteristic?

No

Please give reasons for your answer.:

We believe that the sentencing should take into account more than one protected characteristics because these victims are often more vulnerable because of their multiple protected characteristics.

Should the aggravation consistently be recorded?

Yes

Please give reasons for your answer.:

Where possible aggravation should be recorded to enable the public to understand that our judicial systems are dealing with these offences seriously.

Is it necessary to have a rule that the sentencing judge states the difference between what the sentence is and what it would have been but for the aggravation?

Yes

Please give reasons for your answer.:

Having a rule to state the difference of sentencing as a result of an aggravation will help demonstrating to the public that our justice system treat prejudice motivated incidents seriously.

Standalone offence: section 50A Criminal Law (Consolidation) (Scotland) Act 1995: racially aggravated harassment and conduct

Is this provision necessary?

No

Please give reasons for your answer.:

We do not consider extending standalone charge to other groups, instead we would advise the review to consider extending aggravations to other groups.

Should the concept of a standalone charge be extended to other characteristics?

No

If so, which groups? Please give reasons for your answer.:

Stirring up hatred and online hate crime

Should there be offences relating to the stirring up of hatred against groups?

Yes

If so, which groups? Please give reasons for your answer.:

We believe there needs to be a stronger legislation to address the stirring up of hatred, in particular, against women, disabled people, minority ethnic groups, religious groups, LGBTI+ people and so on.

If there are to be offences dealing with the stirring up of hatred against groups, do you consider that there needs to be any specific provision protecting freedom of expression?

No

Please give reasons for your answer.:

Protecting freedom of expression is important however this review is primarily focussing on addressing the negative attitudes people are displaying through conduct or speech. These negative attitudes are causing societal harms therefore protecting victims of harassment of any form are paramount.

Does the current law deal effectively with online hate?

No

Please give reasons for your answer. :

We believe that social media companies could do more for example, requesting proof of ID for setting up email or social media accounts may help eliminating the anonymity that abusers hide behind on social media sites.

Are there specific forms of online activity which should be criminal but are not covered by the existing law?

Don't know

Please give reasons for your answer. :

Should this be tackled through prosecution of individuals or regulation of social media companies or a combination of the two?

Yes

Please give reasons for your answer.:

A single point of entry site that reports, both to social media and the police, instances of online would help coordinate this.

Offensive behaviour at football

How clear is the 2012 Act about what actions might constitute a criminal offence in the context of a regulated football match?

How clear is the 2012 Act about what actions might constitute a criminal offence in the context of a regulated football match? :

We do not think the 2012 Act is as clear as it could be.

Should sectarian singing and speech, and the waving of banners and making gestures of a sectarian nature at a football match be the subject of the criminal law at all?

Yes

If so, what kind of behaviour should be criminalised?:

We support that the criminal offence should include singing, speech, gesture and signage.

Does equivalent behaviour exist in a non-football context?

Yes

Yes

Please give reasons for your answer.:

We also support that the jurisdiction of this act should go beyond Football matches because there is evidence these conducts are taking place in pubs/clubs and other activities.

Is it beneficial to be able to prosecute in Scotland people who usually live in Scotland for offences committed at football matches in other countries?

Yes

Please give reasons for your answer.:

We agree that Scottish people who travel to other countries should be prosecuted when they commit an offence because we must demonstrate to all fans that they must behave lawfully while they are abroad.

Should a similar provision apply to non-football related hate crime?

Yes

Please give reasons for your answer.:

Is it appropriate to have a requirement that behaviour is or would be likely to incite public disorder in order for it to amount to a criminal offence?

Yes

Please give reasons for your answer.:

We would support that there is a requirement to make it a criminal offence because all ill-founded prejudices should not be tolerated in any setting.

Is there any conduct currently subject to prosecution under section 1 of the 2012 Act which would not be covered by pre-existing common law or legislation?

Yes

Please give reasons for your answer.:

We believe that the overtly sexist and demeaning chanting against women are not being adequately addressed.

Should a football club be able to apply to the court for a football banning order?

Yes

Please give reasons for your answer.:

As well as football clubs being able to apply for a football banning order, we would argue that court should be able to ban a football club if they consistently fail to address their fans' behaviour.

Should the law be extended to other groups?

Do you consider any change to existing criminal law is required to ensure that there is clarity about when bullying behaviour based on prejudice becomes a hate crime?

Yes

If so, what would you suggest?:

We would suggest that a separate tier to address hate incidents that do not contain criminal activities. Currently victims who report hate related incidents to police feel they are not being supported. This could result in them not reporting any incidents in the future.

Do you think that specific legislation should be created to deal with offences involving malice or ill-will based on:

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It is important that we consistently send a message to victims that bias and inequality of treatment is condemned by the State, therefore we feel strongly that groups stated in this question need to be given careful consideration in the future legislation.

For example, if women are being harassed in public or online and they hear that the police could not address these matters because there is no legislation to support them. We effectively are signalling to them that these behaviours are acceptable by the justice system.

Other specific issues

Do you have any views as to how levels of under-reporting might be improved?

Yes

Please give reasons for your answer.:

In order to address the under-reporting, we must demonstrate to victims that there are results for every report made. Even when there is no prosecution, victims should be advised of the alternative actions that would address the hate incidents.

Do you consider that in certain circumstances press reporting of the identity of the complainer in a hate crime should not be permitted?

Yes

If so, in what circumstances should restriction be permissible?:

For instances where the individual is very likely to experience further hate crime, then identity of the individual should be protected.

Do you consider that a third party reporting scheme is valuable in encouraging reporting of hate crime?

Yes

If so, how might the current scheme be improved?:

Third party reporting scheme is helpful for the individuals to report incidents at where they feel comfortable. Staff at third party centres need to be adequately trained and supported so they are able build the capacity of communities to report.

Are diversion and restorative justice useful parts of the criminal justice process in dealing with hate crime?

Yes

Please give reasons for your answer.:

We support that diversion and restorative justice should become part of the process especially for those incidents that may not be considered as hate crime. Victims want to see some form of actions taken to address the perpetrators' behaviour therefore it would be beneficial to involve community justice, e.g. perpetrators are asked to remove or paint over their own graffiti's, repair any material damage they caused or perform voluntary work.

Should such schemes be placed on a statutory footing?

Yes

Please give reasons for your answer.:

About You

What is your name?

Name:

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What is your email address?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Fife Centre for Equalities

The Review would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

The Review may share your response internally with Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Please select which version(s) of the consultation paper you read to respond to the questions:

the full version

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Neither satisfied nor dissatisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Neither satisfied nor dissatisfied

Please enter comments here.: