



Introduction

Victim Support Scotland (VSS) is the largest charity supporting people affected by crime across Scotland through the provision of practical help, emotional support and essential information. As such, we welcome the opportunity to respond to the consultation on hate crime legislation in Scotland.

1. Hate crime attacks a person's core identity, whilst also negatively impacting on the victim's wider community and weakening social cohesion. Thus, we agree with a report commissioned by the Scottish Government arguing that tackling hate crime should be "*a priority concern for the whole of society*" (Scottish Government, 2016: 5).
2. VSS is primarily concerned with how we can foster a victim centred approach to understanding and addressing hate crime in all its forms. Our vision is to ensure victims are kept at the forefront of all discussions on hate crime, so as to give a voice to the lived experiences of victims and create responses in accordance with their needs.
3. We are an inclusive organisation, aiming to provide support to all victims of hate crime, including the marginalised whose voices often go unheard. Therefore, consideration on policy and legal responses to hate crime should examine victims who currently fall between the cracks. For example, travellers, refugees, Irish, asylum seekers, sex workers, homeless, elderly, people on state benefits – essentially victims who are not protected by existing legislation as they do not possess one of the protected characteristics. Consideration by legislators should be given to utilising concepts of 'vulnerability' and 'difference'. This would allow overlooked and vulnerable victims of hate crime to receive the recognition they need, which would also enable them to access a greater range of support services.

Definition

4. The Scottish Government defines hate crime as “*crime motivated by malice or ill -will towards a social group*”. Police Scotland follow the definition of hate crime provided by Sir William MacPherson in his 1999 report for the Stephen Lawrence murder enquiry, that hate crime is: “*any offence which is perceived by the victim or any other person as being motivated by malice or ill will towards a social group*” (Police Scotland, 2017). VSS supports the continuation of the Sir William MacPherson definition as it means the police must take seriously the possibility a crime may be motivated by hate if the victim perceives this to be the case.

Restorative Justice

5. The Scottish Government is developing statutory guidance to ensure that, where restorative justice processes are available, they are delivered in a coherent, consistent, victim-focused manner across Scotland and in line with the EU Victim’s Rights Directive. However, the potential benefits of restorative justice to tackle hate crime must be explored further. There is limited research into the effectiveness of restorative justice measures on hate crime offending. It is fundamental therefore that practitioners involved in restorative justice have an in-depth understanding of the nature of hate crime, its impact on victims (including potential for re-victimisation) and how to respond effectively to their needs.

Hate Crime and Harms on Victims

6. The emotional and psychological harms of hate crime are often more severe and enduring than the harms experienced by victims of comparable crimes not motivated by prejudice. Victims often report post-traumatic stress type symptoms such as depression and panic attacks, and psychosomatic symptoms, such as difficulty sleeping. The greater harm caused by hate crimes is thought to be because the attack targets the victim’s core identity, which highlights to the victim they are vulnerable to further victimisation in the future and has caused victims to have suicidal thoughts. Further, the symptoms of vicarious victimisation are often very similar to those experienced by the original victim (psychological, emotional, isolation etc.). This can cause entire communities to retreat into themselves and limit their interactions to only their ‘own’ communities, resulting in segregation between communities through the creation of invisible ‘boundaries’ across which members of minority groups are afraid to cross.
7. A significant number of victims report that ‘low level’ hate incidents are such a regular occurrence in their everyday lives that they become normalised. There

becomes an expectation that a certain amount of abuse is just 'part of life' and an accepted consequence of their 'difference'. This suggests victims have internalised the prejudice they experience. We believe there is a need for greater understanding of the routine, everyday nature of many experiences of hate victimisation and the impact this 'drip-drip' prejudice has on victims.

Underreporting

8. Underreporting is an issue which needs to be addressed to ensure as many victims as possible access legal redress and in order to gain a clearer picture of the scale of hate crime and hate incidents in Scotland. When hate crimes are reported, there is also the opportunity for victims to be referred to organisations for support, where they will have the opportunity to access advice to help them come to terms with their experiences and, where required, receive support on navigating the criminal justice system.
9. Transgender and disability hate crimes have particularly high levels of underreporting. There are numerous barriers that might prevent a victim from reporting a hate crime. This can include fear of retribution, believing the incident is not serious enough to report, the financial cost of any legal process, fear of reprisals or concerns the police will not take the matter seriously. The frequency of 'low level' hate incidents can mean it would be impossible for a victim to report them all or this form of victimisation can become normalised and not something the victim would choose to report. Some victims may not realise what happened to them was a crime.
10. Asylum seekers and refugees can be fearful of reporting hate crimes due to a lack of trust in authorities as a result of persecution they have experienced in their countries of origin, or they may fear deportation as a consequence of reporting a hate crime. LGBT victims may be apprehensive about disclosing their sexual orientation and/or gender identity to authorities. Transgender victims may fear becoming the subject of salacious media attention if their case is made public. Disability hate crimes are thought to be underreported because there is often a relationship between the victim and the offender and the fear of losing the friendship can deter the victim from reporting. The victim may also be dependent on the perpetrator for day to day support which can make them afraid of losing their limited independence if they report the perpetrator. There can also be accessibility issues for disabled people at reporting centres, such as poor wheelchair access or a lack of interpreters.
11. Victims can create coping strategies to deal with victimisation which do not include contacting justice agencies or support services. Victims may also have a lack of confidence in the police. Some victims have had a negative experience reporting a previous incident which deters them from reporting

again in the future, with some victims feeling the police did not take the matter seriously enough or that they were not treated fairly or with respect. As such, VSS supports clarity on what constitutes a hate crime to engender a culture where all those involved in the Criminal Justice Sector are applying the same rules and are in agreement that hate crime is unacceptable.

Third Party Reporting

12. Police Scotland maintains a network of third party reporting centres. These are situated within third sector organisations and are designed to help victims and witnesses report hate crimes and incidents, as well as accessing support. However, these centres often struggle to deal properly with reports due to resourcing issues and they are unevenly distributed across the country. There is also a lack of awareness of the existence and purpose of third party reporting centres among the general public. We would support a public awareness campaign on the function of third party reporting centres and will also assist Police Scotland at identifying areas for potential improvement.

13. We are encouraged that The Scottish Government is setting up a multi-agency delivery group, the remit for which includes addressing barriers to reporting and ensuring third party reporting is widely available and publicised. There is a need to increase trust and confidence in agencies handling victims' reports to ensure victims have a positive experience of the reporting process. There is also a need for more effective communication between victims and the criminal justice system.

Intersectionality

14. We must acknowledge the intersectional nature of hate crime. An intersectional approach means realising victims do not fit neatly into one "box", as miscategorising victims' identities can mean they struggle to access appropriate support or they may be deterred from continuing with support. This can make victims experiences more complex, which can also have consequences for the provision of support.

Collaborative Working and Public Health Perspective

15. Setting up a multi-agency support system would aid collaborative working between different organisations and facilitate the provision of effective support. This should be approached from a public health perspective,

emphasising prevention and promoting a more holistic approach rather than a stand-alone criminal justice response.

Conclusion

16. VSS accepts current hate crime legislation has developed in a piecemeal manner and that it is not as effective as it could be and agree that the independent review on hate crime is necessary. We support the review's intention to consider whether the current mix of statutory aggravations, common law powers and specific hate crime offences provides the most appropriate, effective and consistent protection for Scottish communities, identifying "*gaps, anomalies and inconsistencies*" (Scottish Government, 2017a) in the current legislation, as well as considering how the laws can be simplified.

17. We look forward to reading and responding to the independent review team's report in spring 2018.