

## Response ID ANON-R7GH-1ZGM-Q

Submitted to **Consultation on Scottish Hate Crime Legislation**

Submitted on **2019-02-21 11:19:34**

### Part One – Consolidating and Modernising Hate Crime Legislation

**1 Do you think the statutory aggravation model should continue to be the core method of prosecuting hate crimes in Scotland?**

Yes

**Please tell us why::**

**2 Do you think that the language of the thresholds for the statutory aggravations would be easier to understand if it was changed from ‘evincing malice and ill will’ to ‘demonstrating hostility’?**

Yes

**Please tell us why::**

We believe this definition will be more easily understood by our support staff and volunteers and victims of hate crime.

**3 Do you think changing the language of the thresholds for the statutory aggravations from ‘evincing malice and ill will’ to ‘demonstrating hostility’ would change how the thresholds are applied?**

No

**Please tell us why::**

**4 Do you think that variations of sex characteristics (intersex) should be a separate category from transgender identity in Scottish hate crime legislation?**

Yes

**Please tell us why::**

The drafting of any replacement for section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009 should include intersex as a separate category, rather than a sub category of transgender identity. We agree that consideration should be given to removing outmoded terms such as “transvestism” and “transsexualism” from any definition of transgender identity.

We are reassured that this is supported by the Equality Network, who stated that the language used in the Act does not reflect current understanding or best practice and that intersex should be seen as a separate characteristic. Whilst, we share this view we are not experts in this field and so we will continue to seek guidance from relevant people and groups within the communities concerned.

**5 Do you think that the terms used in Scottish hate crime legislation in relation to transgender identity and intersex should be updated?**

Yes

**Please tell us why::**

**6 If you think that the terms used in Scottish hate crime legislation in relation to transgender identity and intersex should be updated, what language would you propose?**

**Please tell us why::**

We defer to the views of services and organisations representing the interests of the transgender community and people who are intersex on the most appropriate language to use.

### Part Two – New Statutory Aggravations

**7 Do you agree with Option A to develop a statutory aggravation for gender hostility?**

Yes

**Please tell us why::**

**8 Do you agree with Option B to develop a standalone offence for misogynistic harassment?**

No

**If you agree, please tell us why and provide examples of the types of behaviour that could be captured by this offence.:**

It is our view that the clearest and most effective way to single out hate crime is a method involving baseline offences and statutory aggravations reflecting identity hostility.

**9 Do you agree with Option C of building on Equally Safe to tackle misogyny (this would be a non-legislative approach)?**

Yes

**If you agree please tell us why.:**

This option could be taken forward in tandem with plans to develop a statutory aggravation for gender hostility. We know that legislation is not always the best and certainly not the sole way to drive cultural change. Focus on education and other activities as part of the development of Equally Safe may be an appropriate vehicle to help end discrimination and violence against women.

**Please provide examples of the types of behaviour that could be captured by this offence.:**

**10 Do you agree with Option D of taking forward all of the identified options? (This would include development of a statutory aggravation based on gender hostility (Option A); development of a standalone offence relating to misogynistic harassment (Option B); and work to build on Equally Safe (Option C)?)**

No

**If you agree, please tell us why.:**

**Please provide examples of the types of behaviour that could be captured by this offence.:**

**11 Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation?**

Yes

**Please provide details.:**

Elder abuse involves physical assault, sexual assault and harassment, coercion, threats and intimidation, theft and fraud, and neglect (Action on Elder Abuse, 2016). Offences against the elderly are often treated leniently by the courts. Action on Elder Abuse (2016) reference a number of examples of serious abuse and assault which have only received suspended sentences and/or a fine.

The 2007 UK Study of Abuse and Neglect of Older People identified 8.6% of older people living in the community experience elderly abuse (Keeffe et al., 2007). This does not include incidents occurring in social care settings, which Action on Elder Abuse (who gave evidence alongside VSS as part of The Domestic Abuse (Scotland) Bill) states is not being dealt with adequately. Through this and our support work with victims of all ages of crime, including the elderly, we believe additional statutory protections to older people and so support the Government proposals on statutory aggravations pertaining to age.

**12 Do you think there is a need for sectarianism to be specifically addressed and defined in hate crime legislation?**

No (you may wish to go to Question 16)

**Please give your reasons for your response:**

We are part of the Scottish Parliament Cross Party Group on Sectarianism and routinely support victims of racial and religious prejudice – some of whom would identify as having been a victim of a sectarian hate crime. However, there are issues of whether a hate crime is composed of a religious or racial element relating to those of an Irish background in Scotland whose experiences of discrimination are typically framed as “sectarianism”, which can be problematic, as this is not necessarily how victims themselves would define their experiences. For this reason, we are inclined to steer away from generic terms, such as “sectarianism” which can be misleading.

The Scottish Government’s independent advisory group on hate crime has also noted dissatisfaction with existing terminology, stating this can potentially create a misunderstanding of the issues faced by a particular group. Their report noted this is particularly the case in relation to the Irish community in Scotland, as it has been argued that such focus on the religious characteristic means that victimisation based on ethnic origin or cultural difference is not paid sufficient attention.

**13 If your response to question 12 was yes, do you think a statutory aggravation relating to sectarianism should be created and added to Scottish hate crime legislation?**

No (you may wish to go to Q16)

**Please give your reasons for your response.:**

**14 If yes to question 12, do you think a standalone offence relating to sectarianism should be created and added to Scottish hate crime legislation?**

Not Answered

**Please give your reason for this:**

**15 If your response to question 12 was yes, do you agree with the Working Group that sectarianism should be defined in Scots Law in terms of hostility based on perceived Roman Catholic or Protestant denominational affiliation of the victim and/or perceived British or Irish citizenship, nationality or national origins of the victim?**

Not Answered

**Please give your reason for this.:**

**16 If you disagree with the Working Group's proposed definition of sectarianism, what do you believe should be included in a legal definition of sectarianism?**

**Please give your reason for this:**

If there is to be a legal definition of sectarianism it should be clear so our staff and volunteers are knowledgeable about what constitutes this offence and so we are able to provide guidance to those we support. However, we defer to law makers as the authority in this regard.

As part of our recent engagement with the Glasgow Hate Crime Working Group, we consider that the fundamental aspects of sectarian offences, as they are understood in Scotland today, are already recognised in existing legislation - dealing with offences motivated by racial and religious prejudice. We concluded therefore that definitions contained in current legislation adequately deal with racist and religious hate crime.

**17 The Scottish Government recognises that legislation on its own will not end sectarianism. What else do you feel could be done to address sectarianism?**

**Comments::**

Community harms refer to those who share the same identity characteristics as the original victim feeling victimised as a group and experiencing vicarious trauma. The symptoms of vicarious victimisation are often very similar to those experienced by the original victim (psychological and emotional impacts, 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.

This is relevant in relation to the tribal nature of sectarianism and therefore it may be more appropriate to deal with the issue at community level. 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. 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.

**18 Do you think that a new statutory aggravation on hostility towards a political entity should be added to Scottish hate crime legislation?**

Unsure

**Please provide details::**

**19 Do you think that a new statutory aggravation should be added to Scottish hate crime legislation to cover hostility towards any other new groups or characteristics (with the exception of gender and age)?**

No Opinion

**Please provide details::**

Whilst "no opinion" has been chosen, it is worth recognising that some of the most vulnerable victims of hate crime are excluded from existing policy and legislative frameworks. These marginalised groups include the homeless, asylum seekers/refugees and Travellers to name just a few. These groups are situated as 'undesirable', 'criminogenic' or 'less worthy' than more 'legitimate' or historically oppressed victim groups and they lack adequate lobby group support and political experience required to advocate on behalf of their rights. As such, their experiences of victimisation tend to 'fall between the cracks' of existing scholarship and policy frameworks. By stringently conceptualising hate crime as involving particular categories of victims, encompassing singular constructions of identity, it is argued a divisive and hierarchical approach to understanding hate crime has developed. Instead, it is suggested by some researchers that an approach utilising concepts of 'vulnerability' and 'difference' would allow these 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.

As one example, Victim Support Scotland has supported a number of refugee victims of hate crime, including one who is quoted by a case worker as saying: "we fled one place to live in terror here". This same individual also described shutting them self in their flat with the curtains closed out of fear of victimisation. This victimisation is often experienced over and above the destitution and hardship faced by asylum seekers due to the structural barriers they encounter as part of the asylum process when they arrive in the UK. It is established that socially isolated individuals, who are socially excluded or lacking in social networks, are particularly vulnerable to negative impacts as a result of experiencing hate crime victimisation. Refugees and asylum seekers are often socially isolated, having been separated from friends and family, therefore they are also likely to experience severe impacts as a result of hate crime victimisation.

We therefore view the current thinking on the new proposed statutory aggravations as positive, but that it should be viewed as part of journey towards a more tolerant, diverse and victim centred approach to prejudice and discrimination.

**20 Do you think that the religious statutory aggravation in Scottish hate crime legislation should be extended to include religious or other beliefs held by an individual?**

Yes

**Please provide details::**

**21 Do you think that the statutory aggravations in Scottish hate crime legislation should apply where people are presumed to have one or more protected characteristic?**

Yes

**Please provide details::**

A victim of hate crime may be targeted as a result of more than one aspect of their identity and a perpetrator may hold numerous prejudices. A person's experience of victimisation is shaped by their possession of various protected characteristics and other factors, such as their age, gender, socio-economic status and educational background. For example, there is a gendered dimension to Islamophobia due to the greater visibility of Muslim women who wear the veil; while a woman's sexual orientation also makes her more vulnerable to victimisation, as there is a greater risk of her experiencing sexual violence than that of a male victim. It is argued current hate crime legislation oversimplifies the victim experience because it does not recognise the fluid nature of identity or the aspects of inequality that overlap one another. An intersectional approach to hate crime involves an awareness of this interplay in both the experience of victimisation and in the commission of the offence. It also requires consideration for the provision of effective support. Our understanding is that multiple aggravations are catered for already, however we believe that more research into intersectionality is required in order to better understand the lived experiences of hate crime victimisation.

**22 Do you think that the statutory aggravations in Scottish hate crime legislation should apply where people have an association with that particular identity (relating to religion, sexual orientation, age, gender, race, disability, transgender identity and intersex)?**

Unsure

**Please tell us why::**

**Part Three – New Stirring Up of Hatred Offences**

**23 Do you agree with Lord Bracadale's recommendation that stirring up of hatred offences should be introduced in respect of each of the protected characteristics including any new protected characteristics?**

Unsure

**Please provide details::**

Behaviour that incites hatred is part of a spectrum of conduct impacting negatively on people and communities and protecting against it remains an important principle to support marginalised and discriminated social groups.

**24 Do you agree with Lord Bracadale's recommendation that any new stirring up hatred offences should require that the conduct is 'threatening or abusive'?**

Yes

**If not, what do you think the threshold should be for the offence to be committed?:**

**25 Do you think that the existing provisions concerning the stirring up of racial hatred should be revised so they are formulated in the same way as the other proposed stirring up hatred offences?**

Yes

**Please provide details::**

**26 Do you agree with Lord Bracadale's recommendation that there should be a protection of freedom of expression provision for offences concerning the stirring up of hatred?**

Yes

**If you answered yes to the previous question, do you have any comments on what should be covered by any such 'protection of freedom of expression' provision?:**

Protecting freedom of expression is fundamentally important and so we would support Lord Bracadale's recommendation that there should be a protection of freedom of expression for offences concerning the stirring up of hatred. However, this must be harmonised against the damage to communities caused by hate incidents and crimes and therefore any protections should be proportionate and not undermine what the stirring up offence aims to achieve.

**27 Do you agree with Lord Bracadale's recommendation that no specific legislative change is necessary with respect to online conduct?**

Unsure

**Please provide details::**

This is a rapidly growing problem, with online offences now far outnumbering offences in the physical world. Whilst it is difficult to monitor online hate crime, it can have harmful effects on victims. The Scottish Government has identified the internet as one of three key areas requiring change to tackle hate crime, along with public transport and the workplace and we are committed to maintaining engagement with the Government and our partners about how we can campaign to minimise the prevalence of this reprehensible facet of society and support victims in this area.

**Part Four - Exploitation and Vulnerability**

**28 Do you think a statutory aggravation (outwith hate crime legislation) should be introduced that could be applied when a perpetrator exploits the vulnerability of the victim?**

Yes

**Please provide details::**

**29 If you think a statutory aggravation (outwith hate crime legislation) should be introduced that could be applied when a perpetrator exploits the vulnerability of the victim, please provide details of the circumstances that you think such an aggravation should cover?**

**Please provide details::**

More research (see recommendations at the end of the consultation response) required as to how this would operate in practice.

## **Part Five – Other Issues**

**30 Do you think that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should be repealed?**

No Opinion

**Please provide details. :**

If this law is repealed we need to be assured there is a focused alternative charge. We share the reticence expressed by some other groups that repeal could have the effect of sending a message that crimes of racial violence and harassment are not taken seriously in Scotland. However, we recognise that a separate legal framework may not be required and in the context of hate crime, it may be more appropriate to streamline the legislative response to all victims of hate crime and in turn this will be less confusing to the public. We take Lord Bracadale's point on facilitating prosecution, given there is a difference in the sufficiency of evidence required to prove a statutory aggravation because corroboration is not essential.

**31 What do you think the impact of repealing section 50A of the Criminal Law (Consolidations) (Scotland) Act 1995 about racially aggravated harassment could be?**

**Comments::**

See answer to question 30.

**32 Do you think that courts should continue to be required to state in open court the extent to which the statutory aggravation altered the length of sentence?**

Yes

**Please provide details::**

We know from our witness service that the Sheriff explaining what impacted on sentencing in all cases is more satisfactory to victims and witnesses and is helpful at validating what has happened to them and builds trust in the system by giving victims greater confidence to report and in the criminal justice system as a whole.

**33 Do you agree that no legislative change is needed in relation to the support given to victims of hate crime offences?**

Yes

**Please provide details::**

**34 Do you agree that no legislative change is needed in relation to the provision of restorative justice and diversion from prosecution within hate crime legislation in Scotland?**

Unsure

**Please provide details::**

Initiatives to tackle hate crime have broadly involved three main approaches: taking action against perpetrators, supporting victims, and preventative action. In response to the Independent Advisory Group on Hate Crime recommendations, The Scottish Government agreed to explore the potential benefits of restorative justice measures to tackle hate crime offending. We understand The Scottish Government is developing statutory guidance to ensure that, where restorative justice processes are available, it is delivered in a coherent, consistent, victim-focused manner across Scotland and in line with the EU Victim's Rights Directive. Given the involvement of victims in restorative justice interventions, Victim Support Scotland is concerned with ensuring the use of any such programmes to tackle hate crime give full and proper consideration to the best interests of victims. Although, there is some evidence restorative justice can benefit victims by lessening the emotional trauma caused by hate crime (Walters, 2015), there is minimal research into the effectiveness of restorative justice measures with hate crime offending, and concerns have been raised that the widespread use of restorative justice in relation to hate offences will lead to further victimisation. Walters et al's (2016b) research into the effectiveness of police restorative disposals found only seven out of fourteen victims felt their involvement in the restorative disposal had helped to repair the harms caused by the hate crime. These victims reported feeling pressured by the police to agree to the intervention, which had implications for the voluntariness of the process, while eleven out of fourteen felt apologies from offenders were not genuine. In contrast, a community mediation initiative was more successful, with most participants indicating they had reduced anger, anxiety and fear after the mediation process. This was attributed to the fact that participants were able to explain to the perpetrator the harms they had experienced - they felt supported by the mediator and felt they were playing an active part in their own conflict resolution. 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, and how to respond effectively to their needs, and that any proposals are taken forward through the lens of the victim.

**35 What else do you think the Scottish Government could include in its proposals to update Scottish hate crime legislation?**

**Comments::**

Victim Centred Approach to Hate Crime

To ensure a truly victim centred approach to hate crime, addressing reporting barriers must occur alongside the provision of effective support which meets the needs of victims. Research suggests support is not always offered to those reporting to the police, while the majority of victims are unlikely to seek support themselves. Victims may not know where to go for support or may feel suitable support is not available to them. LGBT victims may be concerned about encountering homophobia or transphobia from support workers, while victims in rural communities may find it difficult to access appropriate support. Barriers to accessing support services must be identified and addressed.

#### Understanding the Unique Needs of Victims

Support organisations should have well trained staff providing support and assistance with an understanding of the unique needs of hate crime victims. This includes appreciating how the nature of hate crime, and the experience and harms of victimisation can vary depending on which aspect of a person's identity has been attacked, and depending on any potential intersectionality involved. Organisations should identify they are LGBT friendly, to help this community overcome any trepidation they feel about reaching out for support. The unique nature of disability hate crime also needs to be understood. 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. Intersectionality can make victims experiences more complex, which can also have consequences for the provision of support.

#### Effective Training

For support to be effective, training needs to be comprehensive and specialist. Victim Support Scotland runs an internal and external hate crime training course, designed to provide comprehensive specialised training on hate crime, including how to provide effective support to victims with a focus on the ways in which hate crime impacts victims, witnesses and communities across Scotland. A summary of the training can be found here:

<http://www.victimssupportsco.org.uk/wp-content/uploads/2018/08/HC-Leaflet-2018.pdf>

#### Collaborative Working and a Public Health Perspective

Setting up a multi-agency support system would aid collaborative working between different organisations, facilitating the provision of effective support. Some researchers suggest hate crime ought to be approached from a public health perspective, which emphasises prevention and promotes a more holistic approach rather than simply a 'narrow' criminal justice response.

#### Guidelines for Supporting Victims

Kees et al (2016) have put together guidelines for those supporting victims of hate crime. This includes first of all helping with the most urgent and immediate needs of victims (such as providing temporary housing or security measures), believing victims (not doing so can result in secondary victimisation) and listening to them in order to validate their experiences. Victims should be supported to articulate their needs and support should also help victims to identify resources to overcome the consequences of hate crime. Support should address needs specific to the victim's social identity (for example, they may have distinct faith and cultural needs, or require communication aids if they have a disability, or extra care may be required when communicating with an LGBT service user if they are not 'out' to their family and friends). Kees et al also promote a 'victims' perspective' for best practice, which involves a set of skills and values to utilise in the provision of support, including a non-judgemental approach, advocacy and empowerment, emotional support, signposting etc.

#### Research

More research into the support needs of victims of hate crime in Scotland is required, which could then be utilised to develop guidelines for all those who come into direct contact with victims. We would be interested in being involved in discussions on what a victim led "Hate Crime Tool Kit" might look like to assist support organisations in this area.

#### Alcohol Consumption and Hate Crime Offending

The Scottish data highlights a link between alcohol consumption and some hate crime offending. The accused was described by the police as being under the influence of alcohol in 351 of charges (52% of the total) in 2016-17 (COPFS, 2017). This finding is based on the information recorded in police reports. Therefore, this may underrepresent the link between alcohol and the offending if there were charges where the police did not note that the accused had been drinking. Drug-related charges accounted for 66 charges (10%) in 2016-17, an increase from the 33 charges reported in 2015-16. Hamad (2017: 39) suggests some hate offenders are 'thrill seekers' (McDevitt et al, 2002) who are frequently fuelled by alcohol or other substances. This is evidenced by the COPFS figures. It is thought a portion of hate crimes arise out of banal motivations, such as an inability to control language, or behaviour, in moments of stress, anger or inebriation, or from a sense of weakness or inadequacy that can stem from a range of emotional or psychological processes" (Chakraborti, 2014: 18). A Public Health approach would consider the complexities of hate crime, and as alcohol and drug use is treated as a public health matter, the prevalence of hate and harmful effects on individuals and communities would then feature alongside any alcohol and drug reduction measures and hate crime considered as part of a whole societal approach - rather than focus on concern areas in isolation.

#### Addressing the under-reporting of Hate Crime

There is broad consensus that many hate crimes go unreported. This 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.

Reporting a hate crime is an important step for a victim to take, but it can be a challenging one too. There are numerous barriers which might prevent a victim from reporting a crime against them. Commonly expressed reasons for not reporting include: "fear of retribution; fear that the incident would not be considered

serious enough to be viewed as an act of criminality, fears about expenses which might be incurred during the legal process and concerns that the criminal justice process may be counter-productive and exhaustive" (Scottish Government Report on Hate Crime, 2016: 13). There are many instances where victims of hate crime have described not reporting incidents to the police out of a fear of making their situation worse through reprisals or because the absence of witnesses made prosecution difficult.

#### Underreporting Across Different Minority Groups

Research for the Muslim organisation Tell MAMA found that 63% of respondents who had experienced anti-Muslim hate did not report their experiences to the police (Copsey et al, 2013). It has been found Muslim men are unlikely to report an anti-Muslim hate crime for fear of being viewed as 'weak' (Awan and Zempi, 2015: 7). Other commonly cited reasons for this group included fears that they would not be taken seriously by the police and feeling too scared to contact the police. One respondent, Fatima, stated: "I felt I wouldn't be taken seriously by the police. I also felt embarrassed and it made me feel uncomfortable. I also wasn't 100% sure if it was an offence online". The notion that online hate crimes are deemed 'less worthy' of reporting (McBride, 2016: 41) is a common issue, which accounts for the low reporting rates of such incidents across all minority groups. Other reporting barriers mentioned by Muslim participants included "shame, embarrassment, fear of retribution, stereotyping from the police and also stigma attached from within communities" (Awan and Zempi, 2015: 32). In relation to the latter, Zempi (2014: 114) suggests sensitive issues such as hate crime are not openly discussed within the Muslim community, and this taboo can increase alienation and vulnerability for victims, preventing them from seeking help, while conventional support services may have sufficient understanding and awareness of victims' distinct cultural norms and religious practices, creating further barriers.

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 hate crimes (Bhatia, 2017). Bhatia argues this group is particularly in need of a safe environment where they can confidently report racial hate crimes. 9.2.3 In relation to LGBT hate crime, according to Stonewall (2013a), three quarters of respondents who experienced a hate crime did not report it to the police and even fewer reported crimes to a third party reporting service, while more than one in five of those who did report the crime or incident did not mention its homophobic nature. A recent UK wide survey found four in five LGBT people (81%) who had experienced a hate crime or incident did not report it to the police (Bachmann and Gooch, 2017).

Common barriers to reporting LGBT hate crime include feelings that it would not produce a result (24%), being unsure if what happened was a crime (22%), feeling that the incident would not be taken seriously by authorities (12%) and fear it would make the situation worse (7%). Some participants were also apprehensive about the prospect of disclosing their sexual orientation and/or gender identity (27%) (Antjoule, 2016). While a survey by Stonewall Scotland (2010) found reasons for not reporting homophobic hate crimes included a lack of trust in the police, believing the hate crime would continue regardless of reporting to the police and fearing that reporting it would only make the situation worse (particularly if the victim lives in a small community). In Antjoule's (2016) study, trans people were more likely than LGB respondents to be victims of hate crime, yet trans people were among the least likely to report such incidents to the police (at only 22%). Research in Scotland found similar results, with only 15% of transgender respondents stating they had reported any transphobic harassment to the police (Scottish Transgender Alliance, 2008), while over half of trans respondents (52%) in Broadstock's (2015) research did not report the incident to the police. The most common reason was that the victim 'felt nothing could be done', followed by feeling the incident was 'not serious enough'. The Scottish Government Hate Crime Report (2016: 13) suggests that the notable under reporting of hate crimes by transgender people in Scotland is indicative of a level of isolation and fear. The report highlights that for trans people, there may be fears about becoming the subject of 'salacious media attention' if their case is made public, and this may dissuade many transgender victims from pursuing justice.

Disability hate crimes are believed to be particularly underreported in comparison to other forms of hate crime and conviction rates are also lower than for other forms of hate crime. The Scottish Government (2017b) is implementing their action plan on disability called, 'A Fairer Scotland for Disabled People', to address the severe rates of underreporting in this group. The most critical factor contributing to the underreporting of disability hate crime is thought to be the presence of a relationship between the victim and the offender (Sin, 2013; Thomas, 2011; Thorneycroft and Asquith, 2015). Incidents of 'mate crime' are less likely to be reported because the relationship takes priority and the threat of losing the friendship can be too difficult for the victim to contemplate (Thorneycroft and Asquith, 2015). Victims may be afraid to report the perpetrator if they are someone they rely on for care and support on a day-to-day basis, due to the threat of losing their limited independence if the carer is removed. There can be accessibility issues at reporting centres (poor wheelchair access and the lack of interpreters, for example, British Sign Language interpreters), inaccessible information and reporting forms and systems, and a lack of disability equality training by frontline staff and difficulty in verbalising experiences which can also impact on reporting levels for this group (Sin et al, 2009). Disability organisations suggest a 'protectionist paradigm' (Perry, 2008) exists which positions disabled people as vulnerable. This can result in a paternalistic response to hate crime, where disabled people are removed from the situation, rather than action being taken against the perpetrator to seek justice and redress (Mason-Bish, 2014). In an analysis of quantitative data regarding disability hate crime, it was found there were differences between police and victim support responses to disabled victims depending on the impairment categories of victims, with those with learning difficulties at increased risk of being victimised and less likely to receive support from criminal justice agencies (Macdonald, 2015).

#### Media

During the formulation of our 2017 Report on "Fostering a Victim Centred Approach to Hate Crime in Scotland", our support workers stated that the media have played a role in "whipping people up into a frenzy" about economic migrants, refugees, and asylum seekers. At Victim Support Scotland we are left to pick up the physical and emotional pieces, from the inevitable community back lash, as a result of sensationalist newspaper headlines and articles. The newspapers have been mentioned by victims of hate crime, particularly in relation to race and religion where the lines are often blurred. So, it is difficult to identify on which grounds the victim has been targeted, only that they have, and that it can have damaging and long lasting effect on both individuals and communities.

#### Recommendations

- Conducting more qualitative research into the lived experiences of hate crime victimisation, to provide a richer understanding beyond what is provided by official statistics on hate crime alone.
- Research into the support needs of hate crime victims, online hate crime, Islamophobia in Scotland, and intersectionality, would also be valuable
- Developing and promoting the 'victims' perspective' (Kees et al, 2016) in the provision of support to hate crime victims

- Developing guidelines for best practice in the provision of effective support
- Prioritise and develop an intersectional approach to hate crime
- Make visible and give a voice to the experiences of marginalised victims of prejudice beyond the new statutory aggravations of Gender and age, such as the homeless, asylum seekers/refugees and Gypsies/Travellers
- Address the insidious nature of low-level prejudice underpinning hate crime incidents
- Address the role of the media in fuelling hostility and prejudice towards minority groups and taking a direct approach to calling this behaviour out.
- Support organisations should work together to tackle stigmatising media reporting and encourage honest fact based journalism.
- Develop knowledge of the full spectrum of harms caused by hate crimes and use this information to inform the provision of effective support
- Identify and remove barriers to reporting hate crime and to accessing professional support, particularly in relation to disability and transgender hate crime, as these groups are particularly likely to struggle with reporting incidents and accessing support
- Develop comprehensive specialist training on hate crime
- Restorative Justice Measures should be carefully implemented with a victim centred focus to benefit the victim and avoid secondary victimisation
- Policy responses should give greater consideration to structural dynamics which shape the perpetrating of hate crime and experiences of victimisation, particularly the role of poverty and socio-economic status
- Consideration should be given to the rural context and how to ensure support is accessible to victims in rural areas
- Long term, hate crime ought to be approached from a public health perspective involving collaborative working between different organisations to support victims and their communities.

## About you

### What is your name?

**Name:**

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### Are you responding as an individual or an organisation?

Organisation

### What is your organisation?

**Organisation:**

Victim Support Scotland

### The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

**We will share your response internally with other 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