

Hate Crime and Public Order (Scotland) Bill

Briefing for the Stage 1 debate on 15th December 2020

Victim Support Scotland urges MSPs from all political parties listen to the voices of victims who have helped to shape this legislation and to support the Hate Crime and Public Order (Scotland) Bill at Stage 1.

If this Bill is not allowed to proceed through Parliament, it may be years before victims of hate crime have another chance to be given the protection that they deserve.

Victim Support Scotland supports the general principles of the Hate Crime and Public Order (Scotland) Bill. For victims, the impact of hate crime is frequently more devastating and longer lasting than that of other types of crime because an aspect of their core identity and sense of belonging is attacked, something they have no control over. This means the individual is acutely aware of their vulnerability to future victimisation.

Hate crime can cause physical, emotional and psychological harm; housing, employment and financial issues; fear, shame, hyper vigilance, isolation, movement restriction, suicide ideation and more. It not only negatively impacts individual victims, but whole communities and marginalised social groups.

“He’s attacking me and my family because of who we are and what we look like. It hurts. I can’t change who I am.”

Hate Crime in Scotland 2019/20

On 12 June 2020, the Crown Office & Procurator Fiscal Service published a report on Hate Crime in Scotland 2019-20¹ which brings together figures on race crime, and on crime motivated by prejudice related to religion, disability, sexual orientation and transgender identity.

The main findings revealed:

- There has been an increase in the number of charges reported in 2019-20 compared to 2018-19 for all categories of hate crime.
- **Racial crime remains the most commonly reported hate crime.** In total 3,038 charges relating to race crime were reported in 2019-20, **an increase of 4 percent** compared to 2018-19. **Sexual orientation aggravated crime is the second most commonly reported type of hate crime.**

¹ <https://www.copfs.gov.uk/images/Documents/Statistics/Hate%20Crime%20in%20Scotland%202019-20/Hate%20Crime%20in%20Scotland%202019-20.pdf>

- There were 660 religiously aggravated charges reported, **an increase of 24 percent** compared to 2018-19.
- The number of disability aggravated charges **increased by 29 percent** to 387.
- There were **41 charges reported in 2019-20 with an aggravation of transgender identity.**

These figures do not include the number of hate incidents which occur that are not reported to police.

Consolidating existing hate crime

Victim Support Scotland believes 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.

Statutory aggravations

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. **Victim Support Scotland supports the call from BEMIS and other organisations for a legal requirement to be integrated into the Bill that places a duty on the Scottish Government, Police Scotland, and any other relevant duty bearers to develop a bespoke system of hate crime data collation and disaggregation across all characteristics covered by the Bill.**

“My children are mixed race and are getting racist abuse from both his adult friends and his children. Other children in the neighbourhood are learning to use the same racist language when they see my son. My children are so frightened that they hug me as soon as I get home, checking to make sure I'm not hurt.”

Stirring up offences

Victim Support Scotland supports the Cabinet Secretary's suggested amendments to the 'stirring up' of hatred offence. Similarly, to the other representatives, we wish to see it extended to all of the protected characteristics.

We believe that it should cover both 'threatening' and 'abusive' behaviour on the basis that abusive behaviour is intended to stir up hatred towards an individual or group, even if they are not being directly threatened with harm. Categorisation as a crime of 'intention only' would ensure that legislation acknowledges that the impact of hate crime is frequently more devastating and longer lasting than that of other types of crime because an aspect of an individual's core identity and sense of belonging is attacked. Abusive behaviour forms part of a number of microaggressions that not only negatively impact individual victims, but whole communities and marginalised groups.

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 for victims who are considering whether they wish to report an instance of hate crime.

Protected characteristics

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.

Given their vulnerability and the evidence of the prejudice they experience, marginalised groups such as individuals living with a learning disability, 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, as stated by Lord Bracadale’s review in 2017. This could be done using the framework laid out for the working group to consider a standalone offence for misogyny.

Freedom of expression

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.

“When we meet him on the stairs he is physically threatening, and we’re scared he will throw us down the stairs one day.”

Victim Support Scotland welcomes the general principles of the Hate Crime and Public Order (Scotland) Bill, and we urge MSPs to support the bill at Stage 1.